2400

No.

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A Corporation, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Intervenors and Appellants,

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

VOLUME XIV

PAGES 7251-7510

LODGED
APR - 1 1916
F. D. MONCKTON,
CLERK

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

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—o—

TRANSCRIPT OF RECORD

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DEFENDANTS' EXHIBIT 821.

TOTAL TAXES PAID FROM 1891 TO 1911, INCLUSIVE, ON OREGON AND CALIFORNIA CONGRESSIONAL LANDS.

County	Total Taxes Paid	Average Acreage	Total Average Tax Per Acre	Tax Per Year
Benton	$ 89,968.00	46,552.94	$1.93	$.092
Clackamas	168,888.91	88,298.00	2.02	.096
Columbia	42,488.60	15,391.00	2.75	.185
Coos	211,147.15	88,877.00	2.54	.12
Curry	12.404.58	6,618.00	1.89	.09
Douglas	588,684.60	570,805.00	.985	.044
Jackson	321,618.35	428,488.00	.75	.035
Josephine	180,918.50	148,781.00	1.22	.058
Klamath	58,948.21	45,297.00	1.19	.057
Lane	418,728.84	320,787.00	1.26	.06
Lincoln (1898 to 1911)	15,859.87	8,445.00	1.82	.09
Linn	87,170.50	75,141.00	1.16	.055
Marion	51,648.91	33,057.00	1.56	.074
Multnomah	14,182.60	5,550.00	2.55	.12
Polk	71,469.45	39,017.00	1.83	.09

Tillamook (1892 to 1911) ...	41,245.02	39,724.00	1.04	.05
Washington ..	34,543.89	27,967.00	1.23	.06
Yamhill	29,920.77	31,710.00	.94	.045

Filed May 10, 1913.

A. H. CANNON,
Clerk U. S. Circuit Court.

DEFENDANTS' EXHIBIT 322.

[Tables enclosed to J. B. Eddy, Tax and Right of Way Agent, in letter from E. Dana Durand, Director of Bureau of the Census, dated August 26, 1912, which is not printed but certified up under order of Court and stipulation of parties:]

STATISTICS OF POPULATION.

Table 4.—Population of States and Territories by Counties, at Each Census: 1790 to 1900.

OREGON.

[Organized as a territory August 14, 1848. Admitted as a state February 14, 1859.]

COUNTIES	1900	1890	1880	1870	1860	1850
The State	413,536	313,767	174,768	90,923	52,465	13,294
Baker	15,597	6,764	4,616	2,804	.....	.....
Benton[2]	6,706	8,650	6,403	4,584	3,074	814
Clackamas	19,658	15,233	9,260	5,998	3,466	1,859
Clarke[3]	.....	.....	.....	.....	.....	643
Clatsop	12,765	10,016	7,222	1,255	498	462
Columbia	6,287	5,191	2,042	863	532	.....
Coos	10,324	8,874	4,334	1,644	445	.....
Crook[4]	3,964	3,244	.....	.....	.....	.....
Curry	1,868	1,709	1,208	504	398	.....
Douglas[5]	14,565	11,864	9,596	6,066	3,203	.....
Gilliam[6]	3,201	3,600	.....	.....	.....	.....
Grant[7]	5,948	5,080	4,303	2,251	.....	.....

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COUNTIES	1900	1890	1880	1870	1860	1850
Harney[8]	2,598	2,559	.....	.....	.....	.....
Jackson[9]	18,698	11,455	8,154	4,778	3,786	.....
Josephine[9]	7,517	4,878	2,485	1,204	1,628	.....
Klamath[10]	3,970	2,444	.....	.....	.....	.....
Lake[10]	2,847	2,604	2,804	.....	.....	.....
Lane	19,604	15,198	9,411	6,426	4,780	.....
Lewis[3]	.....	.....	.....	.....	.....	558
Lincoln[2]	3,575	.....	.....	.....	.....	.....
Linn	18,608	16,265	12,676	8,717	6,772	994
Malheur[1]	4,208	2,601	.....	.....	.....	.....
Marion	27,713	22,934	14,576	9,965	7088	2,749
Morrow[11]	4,151	4,205	.....	.....	.....	.....
Multnomah	103,167	74,884	25,208	11,510	4,150	.....

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COUNTIES	1900	1890	1880	1870	1860	1850
Polk	9,928	7,858	6,601	4,701	3,625	1,051
Sherman[12]	3,477	1,792	.....	.....	.....	.....
Tillamook[3]	4,471	2,982	970	408	95	.....
Umatilla[13]	18,049	13,381	9,607	2,916	.....	.....
Umpqua[5]	.....	.....	.....	.....	1,250	.....
Union[14]	16,070	12,044	6,650	2,552	.....	.....
Wallowa[14]	5,588	3,661	.....	.....	.....	.....
Wasco[15]	18,199	9,183	11,120	2,509	1,689	.....
Washington	14,467	11,972	7,082	4,261	2,801	2,652
Wheeler[16]	2,443	.....	.....	.....	.....	.....
Yamhill	18,420	10,692	7,945	5,012	3,245	1,512

[1]Malheur organized from part of Baker in 1877.

[2]Lincoln organized from parts of Benton and Tillamook in 1893.

[3]Now in the state of Washington.

[4]Organized from part of Wasco in 1882 and part taken to form part of Wheeler in 1899.

[5]Umpqua annexed to Douglas in 1862.

[6]Organized from parts of Umatilla and Wasco in 1885 and part taken to form part of Wheeler in 1899.

[7]Parts taken to form Harney in 1889 and part of Wheeler in 1899.

[8]Organized from part of Grant in 1889.

[9]Part of Jackson annexed to Josephine between 1880 and 1890.

[10]Klamath organized from part of Lake in 1882.

[11]Organized from part of Umatilla in 1885.

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[12]Organized from part of Wasco in 1889; part of Wasco annexed since 1890.

[13]Parts taken to form Morrow and part of Gilliam in 1885.

[14]Wallowa organized from part of Union in 1887; part of Union annexed to Wallowa since 1890.

[15]Parts taken to form Crook in 1882, Sherman in 1889, part of Gilliam in 1885, and part annexed to Sherman since 1890.

[16]Organized from parts of Crook, Gilliam, and Grant in 1899.

OREGON

Population 1860-1880

	1880.		1870.		1860.
Albany	1,867	(a)	1,992		....
Ashland	842	(b)			327
Astoria	2,808		639		252
Brownsville	143	(a)	788		....
Central Point	....		....		....
Coquille City	176		....		....
Corvallis	1,128	(b)			581
Dallas	670	(a)	795	(a)	450
Empire City (precinct)	412		381		176
Eugene	1,117		861		1,188
Florence	68		....		....
Forest Grove	547	(a)	922		....
Gardiner	576		206		....
Grants Pass (precinct)	(b)		....		....
Harrisburg	422	(a)	1,014		....
Hillsboro	402	(a)	796		....
Independence	691		....		425
Jacksonville	889	(b)			892
Junction	428		....		....
Kerbyville	75		....		....
Klamath Falls (c)	250		....		....
Lafayette	396	(a)	655	(a)	417
Lebanon	270	(a)	515		....
Marshfield	642	(a)	402		....
McMinnville	670		888		....
Medford	....		....		....
Monroe	185	(b)			....

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	1880.	1870.	1860.
Myrtle Point	52	....	....
Newport	52 (b)	(b)	
Oakland	369	.... (a)	357
Oregon City	1,263	1,882	889
Portland	17,577	8,293	2,874
Rainier (precinct)	372	116	85
Roseburg	822	.... (a)	885
St. Helens	209 (a)	144	....
Salem	2,588 (a)	1,139	....
Scottsburg	68 (a)	101	....
Springfield	160 (a)	640 (a)	398
Tillamook or Lincoln (precinct) (d)	499	628	....
Toledo (precinct)	282 (b)	(b)	

(a) Population of precinct.
(b) Not separately returned.
(c) Returned as Linkville in 1880.
(d) In Marion County.

DEFENDANTS' EXHIBIT 823.

Population of Certain Counties and Towns for Three Years.

	1910	1900	1890
Benton County	10,668	6,706	8,650
Corvallis	4,552	1,819	1,527
Philomath	505	848	
Clackamas County	29,931	19,658	15,288
Estacada	405		
Milwaukee	860		

Oregon City	4,287	3,494	3,062
Douglas County	19,674	14,565	11,864
Oakland	467	365	339
Canyonville	149		
Roseburg	4,738	1,690	1,472
Gardiner	391	286	229
Glendale	646		
Myrtle Creek	429	189	
Drain	335	193	
Riddle	187	131	
Yoncolla	233		
Lane County	33,783	19,604	15,198
Cresswell	367		
Cottage Grove	1,834	974	
Eugene	9,009	3,286	
Florence	311	222	
Junction City	759	506	
Springfield	1,838	353	371
Coburg	613		
Lincoln County	5,587	3,575	
Newport	721	256	121
Toledo	541	302	
Linn County	22,662	18,603	16,265
Albany	3,275	3,149	3,079
Halsey	337	294	270
Brownsville	919	698	580
Harrisberg	453	502	418
Lebanon	1,820	922	829
Scio	295	346	253

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Sodaville	110	178	66
Sweet Home	202		
Waterloo	88	59	
Marion County	39,780	27,713	22,984
Aurora	190	122	
Butterville	49		
Gervais	276	224	
Hubbard	283	213	117
Jefferson	415	278	307
Mt. Angel	545	587	
St. Paul	103		
Salem	14,094	4,258	
Silverton	1,588	656	511
Stayton	703	324	381
Sublimity	188		
Turner	191		
Woodburn	1,616	828	405
Polk County	13,469	9,923	7,855
Dallas	2,124	1,271	848
Falls City	969	269	
Independence	1,160	909	
Monmouth	493	606	
Grande Ronde Indian Reservation	368	402	
Washington County	21,522	14,467	11,972
Beaverton	386	249	
Cornelius	459	246	
Forest Grove	1,772	1,096	665
Hillsboro	2,016	980	
Sherwood	115	111	

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Yamhill County.....			
Amity	407	292	
McMinnville	2,400	1,420	1,868
Carlton	886	145	
Yamhill	825	254	
Dundee	196	124	
Dayton	458	298	804
Lafayette	412	859	865
Newberg	2,260	945	514
Sheridan	1,021	466	299
Willamina	876		

DEFENDANTS' EXHIBITS 324-325-326-327-328-329-330.

Purports to be statements of the summaries of the assessment rolls of the various counties of the State of Oregon as equalized by the County Boards of Equalization, compiled by the Board of State Tax Commissioners for the years 1911, 1910 and 1909, and as compiled by the Secretary of State for the years 1908, 1907, 1906, 1904, 1903, 1902, 1901 and 1900, showing, by counties, number of acres of tillable lands, value of tillable lands, number of acres of non-tillable lands, value of non-tillable lands, value of town and city lots, improvements on town and city lots, etc., and showing total value of taxable property as equalized by the County Boards of Equalization for the respective years, and as equalized by the State Tax Commissioners for the years 1911, 1910 and 1909.

These exhibits are not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 331.

Purports to be a statement of taxes paid upon Congressional lands in same items including other property from the years 1873 to 1890, both inclusive, in the counties of Benton, Lane, Linn, Marion, Washington and Yamhill, and is as follows:

Year	Acres	Valuation	Tax	
1873	13,363		$ 300.68	
1874	13,628	$ 4,087	85.88	Paid
1875	12,889	3,206	48.03	Paid
1876	12,844	3,206	73.76	Paid
1877	Not totaled	3,029	48.46	Paid
1878	11,714	2,967	51.95	Paid
1879	10,553	3,165		Paid
1880	9,973	2,992	53.86	Paid
1881	9,533	12,000	186.00	Paid
1882	9,533	12,000	192.00	Paid
1883	7,815	9,769 Inc.	1,337.96	Paid
1884	7,797	9,700 Inc.	1,217.20	Paid
1885	Not totaled	9,295 Del.		Paid
1886	7,331	16,327 Inc.	971.42	Paid
1887	7,331	16,927 Inc.	1,331.50	Paid
1888	7,010	8,762 Inc.	1,307.86	Paid
1889	6,642	8,302	180.15	
1890	7,414	9,267	174.61	

OREGON AND CALIFORNIA RAILROAD COMPANY CONGRESSIONAL LANDS IN OREGON

DOUGLAS COUNTY

Year	Acres	Valuation	
1878	11,484	$141,435	Agricultural
1879	11,754	141,435	Agricultural
1880	10,155	142,220	Agricultural
1881	11,680	Not valued	Agricultural
1882	11,584	Marked paid	Agricultural
1883	11,199	22,398	Called patented
1884	2,240	.....	(With other property)
1885	11,786	312,106	
1888	12,479	15,590	
1889	12,720	No valuation.	
1890	12,720	No valuation	

LANE COUNTY.

Year	Acres	Valuation	Tax	
1874	40,689	$12,207	$ 170.89	Paid
1875	39,553	11,866	177.99	Paid
1876	38,900	11,670	175.00	Paid
1777	38,152	11,445	206	Marked paid but erased

Year	Acres	Valuation	Tax	
1878	52,258	14,000	196.00	Paid
1878	29,986	11,994	167.90	Paid
1879	56,078	15,000	225.00	Paid
1880	55,949	15,106	241.80	Paid
1880	29,986	11,994	191.90	Paid
1881	55,979	15,115	256.95	Paid
1881	29,986	11,994	203.90	Paid
1882	29,986	11,994	179.91	Paid
1883	54,093	16,228	259.65	Paid
1884	51,583	15,475	247.60	Paid
1884	29,986	12,000	196.00	Paid
1885	29,986	12,000	180.00	Paid
1886	48,364	14,510	203.15	Paid
1886	29,986	12,000	.....	Paid
1887	47,483	12,245	249.30	Paid
1888	53,332	17,950	287.20	Paid
1889	....	....	1,507.68	
1890	41,806	83,616	1,873.92	Paid
The assessment for 1890 was Sheriffs.				
1890	261,212	522,415	11,754.56	No evidence that this was paid.

LINN COUNTY

Year	Acres	Total Tax	
1883	Not computed	$ 187.44	
1884	32,184	4,404.40	Included with other property
1885	30,695	2,785.57	Included with other property
1886	31,324	3,047.81	Included with other property
1887	30,089	2,486.50	Included with other property
1888	29,844	165.18	
1889	23,475	3,557.98	Included with other property
1889	Springfield Br	1,515.96	
1890	23,475	3,389.08	Included with other property
	Spg. Branch	1,515.96	

MARION COUNTY

Year	Acres	Value	
1880	19,984	$5,000	Paid
1881	19,691	7,000	
1882	18,753	5,700	
1883	18,481	6,000	Paid
1884	15,596	5,500	
1885	16,094.98	8,000	
1886	15,622	8,000	
1887	15,464	15,464	

Year	Acres	Valuation
1889	15,123	15,123
1890	15,949	19,939
1878	22,484	6,730
1879	4,536	1,360

All included with road bed and station grounds.

WASHINGTON COUNTY

Year	Acres	Value	Tax
1883	5,822	8,700	156.60
1884	5,382	9,000	144
1885	5,378	9,000	126
1886	5,383	9,000	135
1887	5,253	8,900	160.20
1888	5,213	8,850	141.60
1889	5,077	8,880	161.16
1890	5,418	26,400	482

YAMHILL COUNTY

Year.	Acres.	Valuation	Tax.
1877	17,875.75	$13,406.83	$ 234.61
1878	Not computed	7,717	154.34
1879	14,600	7,300	
1881	11,677	6,000	
1882	10,842	6,000	61.18

Year.	Acres.	Valuation	Tax.	
1884	9,550.80	4,775	83.57	
1885	9,330	4,669	2,035.04	incl.
1886	9,046	4,675	2,044.39	incl.
1887	8,582	4,263	2,501.19	incl.
1888	Not computed	4,853	2,732.12	incl.
1889	Not computed	6,180	134.86	
1890	Not computed	9,524	209.52	

DEFENDANTS' EXHIBIT 332

Purports to be two sheets of standard map of the Oregon & California Railroad Company purporting to show lands of the Booth-Kelly Lumber Company colored in red, and the Wentworth lands colored in green.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 333

Is a certified copy of an Act of Congress, approved August 20, 1912, entitled "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,' and so forth," and is as follows:

[PUBLIC—No. 278.]

[H. R. 22002.]

An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

SEC. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

SEC. 3 That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen

hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: *Provided,* That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

SEC. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase

all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants or their successors or assigns, respectively: *Provided,* That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: *And provided further,* That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further,* That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

SEC. 5 That the provisions of section four of this Act shall not be construed to apply to the suit involving

approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

SEC 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

Approved, August 20, 1912.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 334

is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," as follows:

OREGON AND CALIFORNIA RAILROAD LAND GRANT.

July 16, 1912.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Robinson, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany H. R. 22002.]

The Committee on the Public Lands, having under consideration the bill (H. R. 22002) supplementing the joint resolution approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits," etc., recommend the adoption of the following amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thir-

tieth, nineteen hundred and eight, entitled "Joint Resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this act; *Provided*, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any of the parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

Sec. 4. That the Attorney General is hereby authorized to compromise, in the manner hereinafter provid-

ed, any suit heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successor or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; *Provided*, That the

benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: and *provided further,* That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further,* That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any such purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this act shall not be construed to apply to the suit, involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, Southern Pacific, Stephen T. Gage, Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this act be construed to apply to any of the lands involved in said last-described suit, nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this act contained, nor action taken pursuant to the provisions of this act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

The committee considered, in connection with H. R. 22002, the bill H. R. 23719, which is similar. Many amendments being recommended to the text of the bill, it is thought simpler to report one amendment in the nature of a substitute. This will probably save much time in the consideration of the bill by the House.

This measure is supplemental to Senate joint resolution 48 (Public Resolution No. 18), approved April 30, 1908, which is as follows:

JOINT RESOLUTION Instructing the Attorney General to institute certain suits, and so forth.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General of the United

States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described acts of Congress, to-wit: "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the acts approved June twenty-fifth, eighteen hundred and sixty-eight, and April tenth, eighteen hundred and sixty-nine; also "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said state," approved March third, eighteen hundred and sixty-nine; also "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said acts; and in and by any and all such suits, actions, or proceedings the Attoroney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions, and proceedings, including the claim on behalf of the United States that the

lands granted by each of said acts, respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said acts which may be alleged and established in any such suits, actions, or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions, or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions, or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same: *Resolved further*, That the authority and direction hereinbefore given shall extend to any and all suits, actions, or proceedings which may be instituted or pending under the authority of the Attorney General at the time of the adoption and approval hereof.

Under authority contained in said resolution the United States instituted one suit against the Oregon & California Railroad Co. and others for the purpose of declaring a forfeiture, and for other purposes. This suit involved approximately 2,400,00 acres of land which said railroad company has not sold and claims title to by virtue of the grants hereinafter referred to.

In addition to this suit against the railroad company the Government also brought 45 suits against various

grantees of the railroad company. The lands involved in these suits aggregate approximately 400,000 acres of land. The purpose of this legislation are, first, to confirm the proceedings of forfeiture already had by the Government, and, second, to authorize a compromise of the 45 suits against the purchasers. No compromise is to be made of the main suit against the railroad company for the 2,400,000 acres of land unsold and still claimed by the railroad company. That is to be litigated to final decree.

The history of the legislation and circumstances out of which grows the necessity for this measure is interesting, extending over a period of almost half a century.

July 25, 1866, Congress granted alternate sections of land for 20 miles on either side of a line to such railroad company as might be designated by the Legislature of Oregon, to build from Portland south to the California line, and to the California & Oregon Railroad Co., which was already incorporated under the laws of California, to construct through the Sacramento Valley to the Oregon line. At that time no railroad company was organized in Oregon. The act of July 25, 1866, did not require the railroad company to sell to settlers.

One Joseph Gaston caused to be organized the Oregon Central Railroad Co. in October, 1866, for the purpose of taking the benefits of said grant. The act of 1866 prescribed that before any railroad could re-

eive the benefits of the grant it must be designated y the Oregon Legislature as a proper company for that urpose. The Oregon Legislature designated the Ore-on Central Railroad Co., organized by Gaston, but is company failed to build the 20 miles of road within wo years, as prescribed by the act.

One Ben Holladay, then of Salem, Oreg., was prom-nent in the organization of another railroad also called ne "Oregon Central Railroad Co."

A resolution extending the time for the completion f the 20 miles of work was passed, but before Gaston's ompany could avail itself of the grant, Holladay and is company succeeded in having the Oregon Legisla-ure rescind its action in designating Gaston's company s the beneficiary, and also succeeded in having Holla-ay's company designated. Holladay was also active n securing the passage of the act of April 10, 1869 which s as follows:

Be it enacted by the Senate and House of Represen-atives of the United States of America in Congress as-embled, That section six of an act entitled "An act ranting lands to aid in the construction of a railroad nd telegraph line from the Central Pacific Railroad, n California, to Portland, in Oregon," approved July wenty-fifth, eighteen hundred and sixty-six, be, and he same is hereby, amended so as to allow any railroad ompany heretofore designated by the Legislature of he State of Oregon, in accordance with the first sec-ion of said act, to file its assent to such act in the De-

partment of the Interior within one year from the date of the passage of this act, any such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if each assent had been filed within one year after the passage of said act: *Provided,* That nothing herein shall impair any rights heretofore acquired by any railroad company under said act, nor shall said act or this amendment be construed to entitle more than one company to a grant of land: *And provided further,* That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869.

It is out of the last proviso contained in this act that the controversies involved in this legislation have arisen.

After the passage of this act of April 10, 1869, Holladay's company began and completed, within the time authorized by the extension act, 20 miles of road, and Gaston's company abandoned work, withdrew from the field, and left Holladay's company as the only applicant for the grant.

Confusion arose out of the fact that both Gaston's and Holladay's company were named the "Oregon Central Railroad Co."

Holladay's company was reorganized in 1870, and thereafter was known as the "Oregon & California Rail-

road Co." Subsequently, Gaston secured the grant of May 4, 1870, to his Oregon Central Railroad Co., in part as follows:

Sec. 4. An be it further enacted that the said alternate sections of land granted by this act, excepting anly such as are necessary for the company to reserve for depots, stations, sidetracks, wood yards, standing ground, and other needful uses in operating the road shall be sold by the company only to actual settlers in quantities not exceeding one hundred and sixty acres, or a quarter section, to any one settler, and at prices not exceeding two dollars and fifty cents per acre.

This grant, which is known as the West Side grant, comprised only 128,000 acres of land. In 1880, after Gaston's Oregon Central Railroad Co. had completed the 47 miles of road, the Oregon & California Railroad Co. secured by conveyance all the rights, privileges, and franchises of said West Side grant. The road was finally completed in 1887 to the California line.

From that time on patents were issued to the Oregon & California Railroad Co., successor to the Oregon Central Railroad Cos., under the act of July 25, 1866, as amended by the act of April 10, 1869. About 1895 large quantities of land in both grants were patented to the Oregon & California Railroad Co.

For a long time after the passage of the acts of 1869 hereinbefore referred to the railroad sold the lands at $2.50 an acre, and sales were substantially made with-

in the provisions of the act of 1869. About 1892 or 1893 the railroad company adopted the policy of disposing of the lands in large areas. In 1901 the so-called Harriman interests obtained control, and in January, 1903, the policy was adopted of reserving from sale the remaining lands. From the center of Oregon to the eastern boundary line of the State the railroad owned nearly one-half of the land within 30 or 40 miles of the railroad. In February, 1907, the Legislature of Oregon memorialized Congress, protesting against these violations of the grant by the railroad company, and the resolution of 1908, under which the suits were instituted, was passed.

The West Side grant involving approximately 128,000 acres, and the East Side grant, embracing about 3,200,000, both passed into the ownership of the Oregon & California Railroad Co., a subsidiary corporation to the Southern Pacific. From these two grants approximately 820,000 acres were sold prior to the withdrawal of the lands by the railroad company from sale on January 1, 1903. Of this 820,000 acres, 296,000 acres were sold to 4,930 purchasers in quantities not exceeding 160 acres to a single purchaser; 524,000 acres were sold to 376 purchasers in quantities exceeding a quarter section to the purchaser; of the 524,000 acres that were sold in quantities not exceeding 160 acres to the purchaser, 400,000 acres were in quantities exceeding 1,000 acres to the purchaser.

The Government in patenting the lands to the rail-

road company did not place any limitations or conditions in the patents. The first act, to wit, that of July 25, 1866, did not limit sales to actual settlers in areas of 160 acres. That provision was contained in the act of April, 1869. Some of the lands were patented under the former act alone, while other patents were issued under both acts. The most of them as appears from the statement of the Assistant Attorney General refer only to the act of July 25, 1866, which did not contain the restrictions. Titles from the railroad company to this land acquired by said company through patents from the Government were examined and approved without question by the leading lawyers of Oregon. The Department of the Interior examined the abstracts and approved the titles in exchanges with the Oregon & California Railroad Co., receiving back said lands and giving fee to lands in other parts of the country—that is, the Interior Department to the extent of 50,000 acres of land approved the title of purchasers.

No question seems to have arisen concerning the validity of these titles either in Oregon or with the Government until quite recently. Much of the lands sold by the Government have been acquired by timber operators who have made considerable investments. The evidence also shows that the greater portion of the land is situated on steep hillsides, is rocky, and not susceptible of cultivation. It is chiefly valuable for timber. The industrial activity of a considerable portion of Oregon is grounded on these titles. It is of importance to the whole public that some adjustment be made as to the

title to the lands which have been sold by the railroad company. Passing over any legal question as to the right of the Government to forfeit lands which have been sold by the railroad under the conditions hereinbefore set forth, it is manifest that these purchasers have equities which ought not to be disregarded.

It is the purpose of this legislation to recognize these equities. The legislation is, in actual effect, rather in the nature of a confirmation of titles. The suggestion made by the Interior Department that compromises be effected only upon the joint action of the Department of Justice and the Interior Department was for the purpose of investigating each case and recognizing the varying equities of the purchasers. This course would require the employment of a numerous field force of special agents, would prolong the controversy, and probably result in failure to settle in many instances.

The committee, after carefully considering the whole subject, and this feature of it in detail, have reached the conclusion that the best course to pursue is that originally suggested by the Department of Justice, namely, treat all purchasers alike and settle with all of them on a uniform basis. Any other course would be no material improvement on proceeding through the courts to a final determination of the litigation.

A brief and partial analysis of the paragraphs is now presented.

Paragraph 1 is designed to confirm and give congressional sanction to the proceedings of forfeiture here-

ofore instituted and now pending under the resolution f 1908. The desirability of this provision is manifest vhen it is stated that objections have been made by the lefendants to the form and proceedure adopted by the Government.

Section 2 provides that the lands when recovered hall not become subject to entry under the public land aws until further legislation is had. Your committee, fter carefully considering the matter, decided that until he lands have been recovered and it has been ascertained ust what lands are for disposition under the public and laws, it will prevent confusion and many conflicts rom arising to deal with that feature of the subject eparately. Moreover, it is also necessary in order to nable the Government to carry out the compromise eatures with the purchasers.

Section 3 limits to one year the period in which other uits may be brought. The Department of Justice in he beginning doubted the advisibility of suing any purhaser from the railroad company. It may not institute ther suits than those now pending. However, the committee recognizes the fact that circumstances may hereafter come to light which would make desirable the institution of new suits, and it is not thought best to now forid that.

Section 4 is the most important provision in the bill. t deals with the method and terms of compromise to be ade by the Government with purchasers from the ailroad company.

Decrees based on stipulations are to be entered adjudging that the lands are forfeited to the United States. The defendants are to be permitted to purchase the lands claimed by them at $2.50 per acre. This is to operate as a compromise of all claims of the United States for waste or trespass. This provision applies only to lands patented to the railroad company and sold by it. It does not apply to lands that have not been patented or to lands that the railroads still claims.

Section 5 makes clear that section 4 as to compromise does not apply to the main suit against the Oregon & California Railroad Co. et al.

Section 6 merely seeks to preserve the right of forfeiture by declaring that nothing in this act shall be taken as a condonation or waiver of any condition in the grants or right of the United States to forfeiture.

The bill on the whole is designed to guard and strengthen the rights of the Government as against the railroad company, which in the opinion of the committee can present no equities or claims to equitable consideration. It also recognizes the equities of purchasers from the railroad company and seks to provide a fair and speedy adjustment of them. Taking into consideration the terms of the original grants, the failure to place the conditions of the act of 1869 in the patents, the acquiescence by the Government in the sales and the acceptance by it of titles from the railroad; having regard also to the character of the lands, which render the greater portion of them unfit for cultivation; and

considering local conditions in Oregon, as well as the rights and interests of the Government, it is believed that this legislation presents the fairest solution of the controversy that can be devised.

DEPARTMENT OF JUSTICE,

OFFICE OF THE ATTORNEY GENERAL,

Washington, D. C., March 22, 1912.

Hon. Joseph T. Robinson,

Chairman Committee on the Public Lands, House of Representatives.

Sir: Your letter of March 16, inclosing copy of H. R. 22002, requesting report upon the subject matter of the proposed legislation, together with such suggestions and recommendations as I may desire to make, has been received.

This bill relates to the litigation involving the land grants of the Oregon & California Railroad Co. under the act of Congress approved July 25, 1866, (as amended), and act of Congress approved May 4, 1870. The bill involves three propositions, viz:

(1) The disposition of lands reverting to the United States by reason of claims of forfeiture asserted pursuant to the joint resolution of Congress approved April 30, 1908.

(2) A limitation of the time within which further suits may be instituted involving lands that have been

sold by the Oregon & California Railroad Co.

(8) Authority for the Attorney General to compromise the suits heretofore instituted involving lands sold by the Oregon & California Railroad Co.

The provisions relating to the disposition of the lands reverting to the United States by reason of claims of forfeiture asserted as aforesaid involve no questions of law, but relate strictly to questions of legislative policy. As to this phase of the proposed legislation, I assume that no recommendation is desired from the Department of Justice.

In my judgment the provisions of the bill limiting the time within which further suits may be instituted against purchasers of these railroad lands, and vesting the Attorney General with authority to compromise suits instituted against the purchasers of these lands, are not only unobjectionable, but desirable; and I respectfully recommend that they be enacted into law.

If you desire, the attorney in charge of this litigation will appear before your committee and explain in detail the grounds upon which my recommendations are based. Respectfully,

GEO. W. WICKERSHAM, *Attorney General*

DEPARTMENT OF THE INTERIOR.

Washington, May 24, 1912.

Hon. Reed Smoot,

Chairman Committee on Public Lands, United States Senate.

Sir: I am in receipt, through reference from your committee, for information as to the law and the facts in relation thereto and such suggestions as I may see fit to offer, of Senate Bill No. 5885, being a bill supplementing the joint resolution of Congress approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits, etc."

This bill has been the subject of repeated conferences between this department and the Attorney General, which has been the cause of delay in making report thereon, and as a result of such conferences I have no objection to offer to the provisions of the bill excepting those authorizing a compromise, which are found in section 6 of the proposed bill. Respecting this section, I have to recommend that it be amended so as to read as follows:

"Sec. 6. That the Attorney General is hereby authorized, with the written assent of the Secretary of the Interior, to compromise by written stipulation with one or more of the defendants in any suit or suits heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands sold and con-

veyed, or agreed to be sold and conveyed, by said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight, upon such terms as may appear to be just and equitable, taking into consideration in adjusting such terms all the facts and circumstances respecting the purchase of said lands and the use, occupation, and improvement thereof. Such stipulation may provide that a decree shall be entered in said suit adjudging that the lands involved therein have been and are forfeited to the United States, and that such lands or any part thereof, or any right or interest therein or in any part thereof, may, after the entry of such decree of forfeiture, be repurchased from the United States by such defendant or defendants upon the terms and conditions agreed upon in such stipulation.

"If the defendant or defendants designated in said stipulation, his or their successors or assigns, shall within three months from the entry of said decree file with the Secretary of the Interior a certified copy thereof and duly comply with the terms and conditions of the stipulation aforesaid, the Secretary of the Interior shall forthwith cause a patent or patents to be issued conveying all of the right, title, and interest of the United States in and to such land or such part thereof or such right or interest therein as may be repurchased from the United States under such stipulation, and such patent or patents shall be in all respects in accordance with the terms of such stipulation.

"*Provided, however,* That the provisions of this sec-

tion shall not apply to any lands that have not been heretofore patented to said Oregon and California Railroad Company."

Very respectfully SAMUEL ADAMS,
First Assistant Secretary.

UNION CALENDAR NO. 330.

62d CONGRESS, 2d SESSION.

H. R. 22002

[Report No. 1008.]

IN THE HOUSE OF REPRESENTATIVES.

March 15, 1912.

Mr. Lafferty introduced the following bill; which was referred to the Committee on the Public Lands and ordered printed.

July 16, 1912.

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

[Strike out all after the enacting clause and insert the part printed in italic.]

A BILL

Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney

General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[That all claims of forfeiture heretofore or here-]
[after asserted by the Attorney General on behalf of]
[the United States in or by any and all suits in equity,]
[actions at law, or other judicial proceedings institut-]
[ed pursuant to the joint resolution of Congress ap-]
[proved April thirtieth, nineteen hundred and eight,]
[entitled "Joint resolution instructing the Attorney]
[General to institute certain suits," and so forth, be,]
[and the same are hereby, ratified and confirmed and]
[are hereby declared to be of the same force and ef-]
[fect as declarations of forfeiture by the Congress of]
[the United States.]

[Sec. 2. That none of the lands reverting to the]
[United States by virtue of any right of forfeiture]
[thereto as aforesaid shall be or become subject to en-]
[try under any of the public-land laws of the United]
[States, or to the initiation of any right whatever under]
[any of the public-land laws of the United States ex-]
[cept as hereinafter provided.]

[Sec. 3. That none of the lands reverting to the]
[United States as aforesaid shall be or become subject]
[to State selection, railroad indemnity or lieu se-]
[lection, forest lieu selection, or any other kind of lieu]
[selection or exchange, or to Sioux half-breed scrip,]

[Wyandotte scrip, Porterfield scrip, Valentine scrip,]
[soldiers' additional homestead entry, or any other kind]
[of scrip, the intention hereof being to prohibit the dis-]
[position of any of said lands under any limited or spe-]
[cial right of selection, location, or entry, except as pro-]
[vided by section six of this act.]

[Sec. 4. That after, but not before, any judgment]
[or decree sustaining any right of forfeiture asserted]
[as aforesaid shall become final, with no right of appeal]
[therefrom, all of the lands so adjudged to have revert-]
[ed to the United States shall be disposed of under the]
[general public-land laws of the United States, and]
[shall be opened to settlement, location, and entry by]
[proclamation of the President under the drawing sys-]
[tem, which proclamation shall prescribe the manner]
[in which the lands may be settled upon, located, and]
[entered by persons entitled to make entry thereof]
[under the public-land laws of the United States; and]
[no persons who shall attempt to initiate any right to]
[enter on said lands prior to the time designated, or]
[otherwise in violation of any of the provisions of said]
[proclamation, shall be qualified to initiate, exercise,]
[or enjoy any rights whatever as to any of said lands]
[under the public-land laws of the United States; the]
[purpose hereof being that all such lands shall be]
[opened to entry at such a time and in such a manner]
[that all persons entitled to make entry thereof shall]
[have equal opportunity therefor: *Provided,* That]
[the provisions of this section shall not apply to any]

[lands that shall be disposed of under the provisions]
[of section six of this Act: *And provided further,* That]
[all lands within the exterior boundaries of any national]
[forest which shall revert to the United States as afore-]
[said shall become national forest lands, and shall be]
[disposed of only under the public-land laws appli-]
[cable to forest lands.]

[Sec. 5. That no suits in equity, actions at law,]
[or other judicial proceedings shall be instituted to]
[said joint resolution approved April thirtieth, nine-]
[teen hundred and eight, that shall involve any lands]
[sold by the Oregon and California Railroad Com-]
[pany prior to April thirtieth, nineteen hundred and]
[eight, unless the same shall be instituted within one]
[year from the date of the approval of this Act: *Pro-*]
[*vided,* That this section shall not be construed to ap-]
[ply to any suits in equity heretofore instituted, nor]
[to any of the parties thereto, nor to any of the lands]
[involved therein, nor to the institution of any further]
[suits in equity, actions at law, or other judicial pro-]
[ceedings relating to any of the lands that are involved]
[in said pending suits.]

[Sec. 6. That the Attorney General is hereby]
[authorized to compromise, in the manner hereinafter]
[provided, any suit heretofore or hereafter instituted]
[pursuant to the provisions of said joint resolution ap-]
[proved April thirtieth, nineteen hundred and eight,]
[involving lands purchased from the Oregon and Cali-]
[fornia Railroad Company. In any such suit the At-]

[torney General may, in his discretion, stipulate with]
[the defendant or defendants who purchased said lands,]
[or are the successors or assigns of such purchaser or]
[purchasers, that decree shall be entered adjudging]
[that the lands involved therein have been and are for-]
[feited to the United States; such decree shall recite]
[that the same was entered pursuant to such stipula-]
[tion. If said purchaser defendant or defendants, or]
[their successors or assigns, shall within six months]
[from the entry of said decree file with the Secretary]
[of the Interior a certified copy of said decree, togeth--]
[er with an application to purchase all of the lands ad-]
[judged by said decree to have been forfeited to the]
[United States as aforesaid, and shall pay to the]
[Treasurer of the United States the sum of two dollars]
[and fifty cents per acre for all of the lands so applied]
[for, the Secretary of the Interior shall cause patents]
[to be issued conveying to said purchaser defendant or]
[defendants, and their successors and assigns, all of the]
[right, title, and interest of the United States in and]
[to all of said lands; and such purchase shall operate]
[as a compromise of any and all claims of the United]
[States for waste or trespass upon any of said lands]
[committed by such purchaser defendants, or their suc-]
[cessors or assigns, respectively: *Provided,* That the]
[benefits of this section shall not be exercised or enjoy-]
[ed except in cases where decree shall be entered pursu-]
[ant to stipulation entered into as aforesaid: *And pro-*]
[*vided further,* That the provisions of this section shall]
[not apply to any lands that have not been patented to]

[said Oregon and California Railroad Company; *And*]
[*further provided,* That the aforesaid privilege of pur-]
[chasing said forfeited lands shall not be exercised or]
[enjoyed as to less than all of the lands involved in]
[said suits, respectively; the purpose hereof being to]
[prevent the elimination from any such purchase of]
[any lands from which timber has been removed or]
[upon which any other waste or trespass has been com-]
[mitted.]

[Sec. 7. That the provisions of section six of this]
[Act shall not be construed to apply to the suit, in-]
[volving approximately two million three hundred and]
[sixty thousand acres, now pending in the District]
[Court of the United States for the District of Ore-]
[gon, wherein the United States of America is com-]
[plainant and the Oregon and California Railroad]
[Company, Southern Pacific Company, Stephen T.]
[Gage, Union Trust Company, and others are defend-]
[ants, being designated in the records and files of said]
[court as suit numbered thirty-three hundred and forty;]
[nor shall the provisions of said section six of this Act]
[be construed to apply to any of the lands involved in]
[said last described suit, nor to create any rights or priv-]
[ileges whatever in favor of any of the defendants there-]
[in.]

[Sec. 8. That nothing in this Act contained, nor]
[action taken pursuant to the provisions of this Act,]
[shall be construed as a condonation of any of the]
[breaches of any of the conditions or provisions an-]

[nexed to any of the grants designated in said joint]
[resolution approved April thirtieth, nineteen hundred]
[and eight, nor as a waiver of any of said conditions]
[or provisions, nor as a waiver of any right of forfeiture]
[in favor of the United States on account of any breach]
[or breaches of any of said conditions, nor as a waiver]
[of any cause of action or remedy of the United States]
[on account of any breach or breaches of any of said]
[conditions or provisions, nor as a waiver of any other]
[rights or remedies existing in favor of the United]
[States.]

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or

other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: Provided, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

Sec. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, what decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file

with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns,, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; Provided, That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: And provided further, That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: And provided further, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this Act shall not be construed to apply to the suit involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other right or remedies existing in favor of the United States.

Note: Lines in brackets are in Original Bill. Lines in italics are amendments recommended by Committee.

DEFENDANTS' EXHIBIT 335

purposes to be a map issued by Department of the Interior, General Land Office, Fred Dennett, Commissioner, State of Oregon, compiled from the official records of the General Land Office and other sources, under the direction of I. P. Berthong, Chief Drafting Division, 1910, and showing thereon in accordance with legend as marked in different colors: U. S. Surveyor General's office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries; and showing also Military Roads, Light Houses, and Townships not subdivided by special designation.

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 336

is Department Circular No. 62, of date of October 29, 1907, issued by the Treasury Department, subject "Transportation of Government Employees and Property."

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANT'S EXIBIT 337

is Circular No. 16, Quartermaster General's Office,

1912, entitled: "Schedule of Land-grant and Bon-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912, Washington, Government Printing Office, 1912." At page 42 of this circular appears the following:

58.—SOUTHERN PACIFIC COMPANY.

From Roseville Junction, Cal., to East Portland Oreg.

July 25, 1866	14	239	And be it further enacted, That
June 25,,1868	15	80	the grants aforesaid are made
Apr. 10, 1869	16	47	upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit dispatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the

rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States. —Act of July 25, 1866, Section 5.

This exhibit has also therewith a map of Land-grant and Bond-aided railroads of the United States, 1912.

Bond-aided Roads shown by heavy black lines.

Fifty per cent Land Grant Roads shown by red lines.

Free Land Grant Roads shown by green lines.

Connections shown by light black lines.

Prepared under direction of Quartermaster General, U. S. A. This map shows a Free Land Grant

road between East Portland, now City of Portland, Oregon, and Roseville Junction, in California.

This exhibit is not printed other than as above, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 338

consists of a set of forms furnished by the Quartermaster Department as Government requests for transportation, with conditions and instructions of Bills of Lading, and conditions and instructions as to use of other forms.

This exhibit is not printed but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 339

purports to be a standard map of the Oregon & California Railroad Company in the state of Oregon, and purports to show, according to the legend, in colors, the following:

In red squares	Vacant government land
In red rectangle with black circle	Lands included in Forest Reserve withdrawn from entry
In red rectangle with red circle	Lands included in Power-site Reserves withdrawn from entry

In red rectangle with smaller red circle	Lands included in Fisheries Bureau withdrawn from entry.
In red square with small black circle	Lands included in Indian Reservation withdrawn from entry

and all shown in their relations to the lands within the limits of the grants, place and indemnity.

This map is not printed, but certified up under order of Court and stipulation of parties,

DEFENDANTS' EXHIBIT 840

Estimated Acreage of Public Lands in the Portland and Roseburg, Oregon, Land Districts.

County	Acres
Multnomah	8,000
Washington	280
Tillamook	8,940
Yamhill	7,460
Polk	7,280
Clackamas	72,760
Marion	840
Lincoln	2,560
Benton	6,560
Linn	9,120
Lane	133,040
Coos	37,920
Curry	57,560
Douglas	197,840
Josephine	257,160
Jackson	189,640
Klamath	16,000
Total	1,012,960

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 341

purports to be a summary showing stockholders, directors and officers of the Oregon and California Railroad Company, as shown by the record books of the Company from October 11, 1870, down to and including April 11, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 342

is the standard map of the Oregon & California Railroad Company of the state of Oregon, purporting to show, in colors, lands examined, cruised, and reported upon by the followings persons. S. C. Bruce, S. A. Carmichael, C. A. Cavell, F. J. Cronin, F. A. Elliott, M. F. McCown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, Wm. Penoyar, and A. W. Rees; and purports to show the location of these lands thus examined, cruised and reported upon, within the limits of these grants.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 343

is a detailed statement purporting to show lands cruised by S. C. Bruce, as classified, present condition as to timber grazing and agriculture, and when denuded—

as to grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 344

is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agriculture, and when denuded—as to grazing and agriculture.

This exhibit is not printed but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 345

is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' In the National Forests" and reprinted in the Congressional Record on August 16, 1912, under the subject of "'Farms' In the National Forests," "Extension of Remarks of Honorable William Kent of California In the House of Representatives," and is as follows, as printed in the Congressional Record:

FARMS IN THE NATIONAL FORESTS.

Extension of Remarks of Hon. William Kent, of California, In the House of Representatives, Thursday, August 15, 1912.

Mr. KENT said:

MR. SPEAKER Under the leave granted to me, I include an article printed in the Saturday Evening Post, by Henry S. Graves, Chief of the Forest Service.

The article is as follows:

FARMS IN THE NATIONAL FORESTS.

(By Henry S. Graves, Chief of the Forest Service.)

The statement has been repeatedly made that the national forest policy retards development. The establishment of the national forests is persistently asserted to to have resulted in the withdrawal of vast quantities of agricultural land from settlement. Certain Members of Congress and hostile newspapers have repeatedly charged the Forest Service with locking up thousands of undeveloped farms in the national forests, and by its bureaucratic methods depriving settlers of the rights to which they are entitled by law. Statements on this subject which entirely misrepresent actual conditions have been made so often and so insistently that, although refuted over and over again, many persons unfamiliar with local conditions have come to believe them.

From its inception the national-forest policy has been vigorously opposed by certain interests in the country. The opposition first attempted to break down the whole system and abolish the national forests. This effort has failed because the people at large are convinced that the national forests must be retained, and much less of direct attack upon the national forests is heard now than

formerly. The opposition attempts to accomplish the same ends by less direct methods.

The attack on the Forest Service in its execution of the forest homestead law is part of this campaign against the whole national-forest system. Many critics of the Forest Service have been misled in regard to the agricultural resources within the national forests and the present methods of putting them to use. They unwittingly lend their support to a movement which, if successful ,will begin the disintegration of the national forests and seriously set back the entire conservation policy.

Misleading information persistently circulated regarding the agricultural lands within the national forests resulted last June in the passage by the Senate of a rider to the appropriation bill for the Department of Agriculture, which could not fail to result in turning over public property worth millions of dollars to private exploitation. Although proclaimed in the interest of agricultural settlement, this amendment would block rather than promote the actual use of agricultural resources. It plays directly into the hands of large interests which are always working to secure public property for private exploitation.

This amendment, called the Nelson amendment, was passed by the Senate, but at the present writing has not passed the House. It required the opening to settlement and entry of all lands fit and suitable for agriculture within national forests, irrespective of their value for other purposes or of the need for their retention for

public use. Existing legislation permits but does not require the Secretary of Agriculture to open agricultural lands within national forests for settlement; in other words, it leaves him discretion to hold the land when the protection of the public interest, in his judgment, requires such a course.

The purpose of this article is to place before the public the facts regarding the agricultural resources within the national forests, to show how agricultural lands are now being made available for the settler, and to indicate the results of legislation such as was incorporated in the agricultural bill by the Senate.

The national forests are situated in the mountains. They embrace the bulk of the forest-bearing lands still in Government ownership in the Rocky Mountains, the Cascade Mountains, the Sierra Nevada Mountains of California, and a part of the ranges adjoining the Pacific coast. East of the Rocky Mountains there are national forests only in isolated mountainous areas, like the Black Hills, of South Dakota; the Bigs Horns, of Wyoming; the Wichita Mountains, of Oklahoma; the Ozarks, of Arkansas; and the sand hills of Nebraska and Kansas, with the exception of small forests in Minnesota, Michigan, and Florida.

For the most part the topography of the national forests is very rugged. Their soil and climate in the main are unsuited to agriculture. In drawing the boundaries of the forests all compact bodies of agricultural

land of any extent have been excluded. In every mountain region, however, limited areas here and there along the bottoms of valleys, on benches, and at the confluence of streams are susceptible of cultivation. The forests include several valleys from one-fourth to one-half mile wide and 20 to 40 miles long, covered with dense virgin timber, where a considerable number of farms can be successfully developed after the forest is cut.

THE TRUTH ABOUT OUR TIMBER LANDS.

Under the present laws, as executed by the Forest Service, these lands are passing into the hands of bona fide settlers as rapidly as the timber is removed. Their area has been enormously exaggerated, because of the pressure of speculators to get timber for nothing under the homestead laws. The arable lands on these few river bottoms will not cover over one-half of 1 per cent of the entire national forest area. The rest of the agricultural land is in scattered parcels, in narrow strips along streams or benches, small patches where two streams unite, or semiarid mesas in the southwest.

Much land lying within the national-forest boundaries is in private ownership, having been acquired before the forests were created. Naturally the most valuable lands were the first to be taken up. The result is that one may travel for hours within a national forest, seeing land that is largely capable of agricultural development but that has not been so developed; and the impression is formed that the land is part of the na-

tional forest. Where critics of the Forest Service have designated particular tracts, investigation has often proved that the criticism concerned land already in private ownership. The supposition that such land is a part of the national forest is natural when it is found covered with heavy timber and without evidences of cultivation. Such land is not cleared because the owners are holding it for the future value of its timber.

Not over 4 per cent of the actual forest area has the combination of topography, climate, and soil that would permit the land to be tilled successfully. Fully one-fourth of this amount can not be cultivated without irrigation. At least half of it is now covered with heavy timber and has a much greater value for its timber than for farming. Over one-fourth is now available for settlement and is opened to the homesteader upon application.

These facts are not appreciated by the general public. Statements are made by some newspapers and Members of Congress that great stretches of the national forests are agricultural. The national forests have been likened to lands in Ohio or Indiana when those States were a virgin wilderness. The belief has been spread abroad that, if opened to entry, these areas would be developed in small tracts, the timber removed, and the land put at once under profitable cultivation. It is asserted that single States, like Colorado or Idaho, have been deprived of the settlement of millions of acres of valuable farms. Such statements are not in accordance with

the facts. In comparison with Eastern conditions, the national forests typically resemble the most rugged portions of the White Mountains or Southern Appalachians.

Equally misleading statements have been spread abroad about the policy of the Forest Service. It has been reiterated that the Government declines to release, under the forest homestead law, lands that are chiefly valuable for agriculture; and again, that the narrow and burdensome restrictions read into the law by the Forest Service so hinder and discourage settlement as to make the statute of no effect. It is doubtless through such misrepresentation that the recent Democratic platform refers to the alleged annulment of the will of Congress as to agricultural lands in national forests by administrative regulation. It is unbelievable that those who drew this plank knew either the actual conditions in the national forests or the real facts about what the Government is doing to make the limited agricultural resources of these forests available for use. They certainly could not have realized the consequences of a general throwing open to entry of all lands in the forests having arable soil, regardless of their value for other purposes.

When the national forests were established there was no law permitting the homesteader to obtain lands within them. In 1906 the so-called forest-homestead law was passed, upon the recommendation of the Forest Service. Under this act lands deemed by the Secretary

of Agriculture to be valuable chiefly for agriculture and not needed for public uses are opened to entry. Under this law the Forest Service has consistently encouraged settlement on lands chiefly valuable for growing farm crops. Since 1906 approximately 1,400,000 acres have been opened to entry in accordance with its terms for the benefit of upward of 12,000 settlers.

THE FIRST PRINCIPLES OF FOREST SERVICE.

The Forest Service desires bona fide settlement in the national forests. One of the fundamental principles of the national forest policy is to promote the best use of every kind of land. Settlement not only puts land of greater value for agriculture than for timber or other purposes to its highest use, but also, by bringing settlers into the mountains, makes forest administration and protection easier. The Forest Service needs the help of settlers in fire protection. It is obtaining their assistance in many localities through cooperative arrangements, and is enlisting their services largely as members of the regular protective and administrative force and in the construction of trails and other improvements. Every home builder in a national forest is an immediate asset in its present administration and future development.

Recognizing these facts, the service encourages settlement under the forest homestead act of all lands that are properly classifiable as agricultural and likely to be taken by bona fide home makers. On the other hand, it has consistently resisted efforts to throw large areas of heavily timbered land out of the national forests on

the ground of alleged agricultural value, when it was certain that agricultural development would not be apt to follow.

Frequent efforts have been made to secure such eliminations by presidential proclamation or by act of Congress. The rider recently adopted by the Senate is the result of a determined effort to require the opening to entry of all lands within the national forests which have any agricultural possibilities, regardless of their value for standing timber, water power, or other purposes besides farming, and regardless of the need of portions of such lands for public uses.

In short, though the Forest Service has done its utmost to encourage home building on lands chiefly valuable for agriculture, it has declined to open to entry under the guise of settlement lands that are worth far more for timber or water power than for any possible agricultural use, and that are not wanted for homes at all.

The Forest Service has been subjected to the greatest pressure to throw open the considerable areas that are now covered with valuable timber and will be suitable for agricultural use when cleared of forest. There has also been strong influence brought to bear to separate from the forests timberlands whose topography, soil, and climate absolutely preclude any agriculture. The timberlands now in private ownership in national-forest regions have been obtained from the Government under various public-land laws for nothing or at a very small

price. Large timber holdings have been built up very cheaply, because entrymen were glad to sell their patents for much less than the real value of the timber. Many of the largest owners thus secured their timber for a few cents a thousand feet. Today it is worth from $2 to $5. The establishment of the national forests stopped these speculative profits. Government timber can now be obtained only by paying its actual market value. It is but natural that the effort to secure these resources under the old terms, at a mere fraction of their worth, should be renewed.

THE WASHINGTON PETITION.

The Forest Service is constantly receiving applications for heavily timbered lands under the forest homestead act. The present value of the timber on such areas far exceeds the value of the land for agriculture after the trees are cut. The purpose of most of these applications is to secure the timber for speculation. In many cases applications have been received for timberlands on mountain slopes where there never will and never can be any farming. Petitions for the elimination of large blocks of land from the national forests, where not over 3 or 4 per cent of the area has any potential agricultural value, are common. A petition that had been adopted by the Legislature of the State of Washington was presented to the President, the Secretary of Agriculture, and Congress last winter, to eliminate over 100,000 acres from one national forest in Washington. The petition asserts that the land is chiefly valuable for agriculture

and does not contain heavy timber. As a matter of fact, the main crest of the Cascade Mountains, rising to a height of over 4,000 feet, runs through the middle of the area, which has growing on it not less than one and one-half billion feet of merchantable timber. Practically 90 per cent of the land has such high elevation that clime alone precludes agriculture. On account of adverse climate, rough topography, and unfit soil, not over 5 per cent of the whole tract can ever be farmed. Of this 5 per cent fully one-half is covered with timber running from forty to seventy-five thousand board feet per acre. A small portion may properly be classed as valuable for agriculture; and this is now being given to settlers under the forest homestead act as rapidly as they apply. The heavily timbered portions having arable soil will be cut over as soon as the timber can be disposed of and then opened to settlement.

Many of the areas that speculators are now seeking contain from 100,000 to 200,000 feet of timber to the acre. Single claims of 160 acres would have a value of from $50,000 to $75,000. In the Priest River Valley, in the Kaniksu Forest, Idaho, there are 25,000 acres of arable land, bearing from 60,000 to 125,000 feet of merchantable timber to the acre. Much of this timber is Idaho white pine, the most valuable forest tree of the Northwest. It is now purchased from the Government at prices ranging from $4 to $6 per 1,000 feet. An acre of timberland in this valley is worth from $100 to $500 for its stumpage. A single homestead of 160 acres would have on it timber worth on the stump from $16,000 to

$75,000. Unimproved, the value of the land for farming could not possibly exceed $1,200. Repeated efforts have been made to secure the elimination of this area under the allegation that it is agricultural land. A considerable portion of the 25,000 acres will ultimately be cultivable, but the aim of those seeking it is not farming or home building, but a virtual gift of Government timber of great value.

The Swan River Valley in the Flathead National Forest, Mont., contains upward of 30,000 acres of arable land, bearing a virgin yellow pine forest of 15,000 to 40,000 board feet to the acre. Its value under present conditions is $2.50 a thousand feet, averaging $50 an acre. The timber on an average claim in this valley would be worth $8,000.

The larger valleys of the Olympic National Forest, Wash., and in the national forests on the western slopes of the Cascade Mountains, contain in the aggregate several hundred thousand acres of arable land susceptible of tillage when cleared of its timber. Many of them bear stands ranging from 20,000 to 150,000 board feet to the acre, with individual acres running as high as 300,000 feet. The standing timber upon an average claim in such lands is worth from $10,000 to $50,000. If thrown open to entry under the general homestead laws, most of the lands of this character would be entered by timber speculators—not by bona fide homesteaders. This is shown conclusively by the character of the entries on similar lands prior to the creation of the national forests.

On the vast majority of the so-called homesteads located on heavily timbered lands there has been at best only a nominal and perfunctory compliance with the requirements of the homestead laws. Cultivation has been almost wholly lacking, and the improvements constructed indicate in their very nature the intention of the claimant to maintain but the most temporary sort of residence for the sole purpose of securing title to the standing timber. A careful analysis of the actual cultivation on all of the timbered homesteads located in the Kaniksu National Forest, Idaho, prior to its withdrawal from entry—a total of 95 claims—showed that only 1.34 per cent of the cultivable area on these entries had actually been farmed.

A similar analysis of 71 entries on the Clearwater National Forest, in the same State, showed that only 1.1 per cent of the arable land in these claims had ever been put to agricultural use. The general commutation of such entries, and their almost universal sale to lumber companies as soon as legal title can be conveyed, are further proof that they have not been entered in good faith for settlement and cultivation, but are sought for the speculative value of their timber. Wholly aside from the thousands of cases in the West—matters of court record—where such lands have been entered by employees or representatives of lumber companies in the interests of their employers, there are thousands of other cases where timber and land have been sold to corporations upon the first day when a legal title could be conveyed by

the claimant. Within the last two years white pine homesteads in the Coeur d'Alene National Forest, Idaho, entered before the forest was created, have been sold to timber corporations on the issuance of final certificate at prices ranging from $10,000 to $20,000 to the claim of 160 acres.

LANDS TURNED OVER TO TIMBER SPECULATORS.

It cannot be assumed that the heavily timbered lands that interested persons are now endeavoring to have thrown open to entry would be filed upon by a different class of claimants or would have any subsequent history other than speculative holding for their timber and final acquisition by large lumbering interests. The timber is far more valuable than before the creation of the national forests, and the competition among lumber companies to secure it is much more keen. Furthermore, every elimination of heavily timbered lands hitherto made from the national forests under local or political pressure has had the same history, namely: (1) Entry by timber speculators; (2) purchase by timber corporations.

In 1901, 705,000 acres of heavily timbered land were eliminated from the Olympic National Forest, Wash., because of the persistent claim made locally and in Congress that the land was chiefly valuable for agriculture. Ten years later not over 600 acres of the timbered portion of the 705,000 acres had been cultivated. Title to 528,720 acres has passed into the hands

of owners who are holding it purely for its timber value. Of this amount over 178,000 acres are in the hands of three companies and two individuals in holdings ranging from 15,000 to 81,000 acres. The following is a list of the principal owners of this land 10 years after its elimination:

	Acres.
Milwaukee Land Co.	81,680
James D. Lacey & Co	48,870
Edward Bradley	16,860
James W. Bradley	16,860
Weyerhauser Timber Co.	15,560
Henry & Larson Land Co.	13,840
Simpson Logging Co.	12,860
E. K. Wood Lumber Co.	10,670
Polson Logging Co.	10,040
George F. Stone	8,920
Ruddock & McCarthy	7,810
Olean Land Co.	6,040
Puget Mill & Timber Co.	5,760
W. H. White Co.	5,280
O'Neil Timber Co.	5,200
Edward and Susan Lowe	5,040
St. Paul, Minneapolis & Manitoba Railroad	4,760
H. S. Upper	4,360
Merrill & Ring Co.	4,160
Union Lumber Co.	4,120

C. C. Bloomfield et al	3,720
Goodyear Land Co.	3,640
George M. Burr	3,480
C. H. Davis	3,440
C. E. Burrows & Co.	2,780
James Campbell	2,760
Mason County Logging Co.	2,680
V. H. May	2,560
James McNealy	2,420
Lincoln Timber Co.	2,280
Carsten & Earle	2,240
Total	318,640

The same result has followed eliminations from the Cabinet National Forest, Mont., in the valley of the Kootenai River, made under local pressure on the ground of agricultural value in 1906 and 1907. The Kootenai Valley, traversed by the main line of the Great Northern Railroad, is exceptionally accessible to the settler. Its soil and climate adapt its arable lands peculiarly to intensive and profitable agriculture and horticulture. An examination of these eliminations in 1909, however, showed that a very large percentage of the land opened to entry had been acquired by various concerns that were engaged in building up timber holdings for speculation.

Heavily timbered lands opened to entry under these conditions not only are taken up by speculators and acquired by timber corporations, but their use for agri-

cultural purposes is effectively blocked for an indefinite period. Such lands, consolidated in large holdings, are held by lumber companies for the future supply of their mills. No settlement is possible until the timber is cut, which may be 25 years hence, and then only by the payment of such prices as the owner may require. If retained in the national forests, subject to the forest homestead act, these lands might be secured without charge as rapidly as it was possible for the Forest Service to dispose of the timber.

LUMBER COMPANIES ON THE LOOKOUT.

The demand for agricultural land for bona fide settlement and cultivation has probably been more intense in the Kootenai Valley, Mont., within the last three years than in any other national forest. The condition that is blocking the agricultural development of this remarkably fertile district is not the presence of the national forest; it is the presence of enormous holdings in the hands of lumber companies and of the Northern Pacific Railroad. These heavily timbered holdings are being reserved indefinitely for a rise in the price of timber or for future lumbering operations, as the business policy of the owners may dictate. In the meantime the settlers can not secure an acre of them. On the other hand, all the lands in the national forest that are chiefly valuable for agriculture are being cut off and opened to entry just as rapidly as this can be done.

This condition, which is typical of many portions of

the Northwest, led the residents of the Kootenai Valley to petition, in 1909, that these lands be not eliminated from the national forest, as had been proposed previously, but that they be retained in the forest and opened to entry under the terms of the forest-homestead act. A similar position was taken by local residents and various commercial bodies in the vicinity of the Flathead and Blackfeet National Forests, Mont., who held "that the general opening to entry of the agricultural portions of those forests would retard the substantial, permanent development of that region by inviting locations for timber speculation rather than bona fide settlers."

It is probable that 2 per cent of the net acreage of the national forests is heavily timbered land of arable soil. The standing timber on this land averages at least 10,000 feet an acre, with an average value of not less than $2 a thousand feet. The minimum value of these lands today for their timber may thus be roughly put at $67,000,000. The opening of such areas to entry in their present condition would be nothing more or less than the grant of public timber worth $67,000,000 to private corporations. Though made under the guise of homestead settlement, this action would be the most effective step the Government could take to retard the settling of these lands by people desiring homes and the actual use of the land for agriculture.

TOO BIG A BONUS.

It is repeatedly urged that the settler needs the money represented by the timber standing on his claim to

assist him in improving and developing the land. Even assuming that the individual homesteader rather than the lumber company would be the chief beneficiary of such a policy, it can not be justified as a basis for administering public property. The Government offers the settler an unimproved farm of 160 acres. The greater part of the lands entered under the forest homestead act are worth, as the settler gets them, from five to fifteen dollars an acre. Should the Government add to a farm worth from twelve hundred to three thousand dollars in its raw state a bonus of ten thousand or twenty thousand dollars' worth of timber to aid in its development? Such a bonus represents a gift of public property that is practically equivalent to hard cash taken from the Federal Treasury through loss of the receipts which the timber on such lands would otherwise yield. Twenty-five per cent of it is money that otherwise would be paid into the county school and road funds under the present law governing the disposition of revenues from the national forests.

Such a policy would carry the subsidizing of particular individuals and classes beyond the limits imposed by common sense and by proper regard for the interests of all the people who must pay these amounts out of the general funds. Furthermore, it is against the spirit and intent of our entire homestead legislation. The homestead laws are based upon the principle that the Government will furnish the raw land, while the citizen will furnish the labor required to make it productive. It is not intended that the homesteader shall receive an

endowed farm more valuable than the average farm in the Middle West today that represents the cumulative industry of two or three generations.

But—and this is the kernel of the whole question—the assumption that the timber patented to the entryman with the land will be used to develop it for agriculture is not true of the vast majority of claims. To accept it is blindly to ignore the one fact most convincingly established by the entire history of the public lands. Again, as in innumerable times in the past, the homesteader becomes under these conditions the man of straw set up by interests which seek public resources for speculation and monopoly. The forces that formerly sought to abolish the national forests outright now seek to break them up and parcel them out in the name of agricultural settlement.

The Forest Service constantly receives applications to enter lands that control valuable water powers. Such tracts are located on reservoir and dam sites at points required for the construction of power houses and on the routes of conduit lines. Some of these applications are made in good faith by persons ignorant of the value of the land for controlling the development of water power or irrigation. In the usual case, however, the value of the site is fully known to the entryman, who wants the land for speculation, not for agriculture.

The Forest Service provides for the use of national forest water-power resources by a system permits that allows development while retaining title to the Govern-

ment, but it has declined to release lands wanted for water-power use on the ground that they are of agricultural character. Such lands are not chiefly valuable for agriculture. In comparison with their commercial value for power development they have but insignificant value for farming. A statement was recently made to the Forest Service by one of the water-power companies in California that it would be glad to pay for certain lands required in developing its plant five times as much as they were worth to anybody else for any other purpose. When the power market justifies the development of these sites it is not unreasonable to anticipate that they will be worth not less than $100 for each available horsepower. Many of the sites are within the national forests control from 1,000 to 5,000 horsepower, giving a single site a prospective value of from $100,000 to $500,000.

Though many of these tracts are unquestionably suitable for agriculture, their opening to settlement could have but one result, namely, speculative entries for their future value for the development of hydro-electric power. As soon as the legal title to such entries could be transferred they would be acquired by power companies. This has been done in the past in many parts of the West through homestead and pre-emption entries and mineral locations.

A homestead claim on a certain river in one of the national forests of Idaho, patented upon questionable compliance with the homestead laws, was sold to a power company immediately upon the issuance of final certifi-

cate. This is a typical instance of the efforts made by hydro-electric companies to acquire power sites and of the methods employed when such sites are opened to entry. There is no reason to assume that any different result would follow the segregation from the national forests of agricultural lands that control valuable sites of this character.

Such claims, furthermore, are not necessarily acquired by power companies for immediate development and use. In many instances the sole purpose is to control undeveloped power and prevent its passing into the hands of possible competitors. These sites will be held until the market permits the development and sale of the electric energy which they are capable of producing without affecting the prices paid by consumers. This is the avowed policy of many of the larger companies which control the sale of electric power in particular regions. The entry of such lands, therefore, in a majority of cases would result not only in checking agricultural development, but also in checking development of any kind for an indefinite period. It would simply strengthen monopolistic control of power resources in the hands of a few corporations.

A MONOPOLY OF WATER RIGHTS.

The monopolistic tendencies of the hydro-electric power companies through interlocking directorates and associated or subsidiary companies have been made evident in recent years. This monopoly will be extended

and strengthened to the extent to which the control of additional power sites can be secured by acquiring national forest lands under the guise of homestead settlement, in many instances very small tracts of arable land along mountain streams being sufficient.

There are, roughly, 12,000,000 horsepower capable of hydro-electric development in the national forests. Probably half of this amount is now under the complete control of the United States. That half will have a minimum value when marketable of at least $600,000,000. The net result of legislation like that proposed by the Senate, as to agricultural lands which control these water powers, would be virtually an absolute grant of such powers to corporate ownershop. To the extent to which the public ownership of water powers in the national forests is impaired by such grants, private monopoly of power will be strengthened. The ability of the Government to regulate or control such monopoly by ownership of the natural resources used will be correspondingly reduced. In many instances the wholesale segregation of agricultural lands now proposed would accomplish indirectly what the House of Representatives refused by a decisive vote to permit when it rejected a bill to grant national-forest lands to the Hydro-Electric Co., of California, last winter (H. R. 12572).

Strong pressure is brought upon the Forest Service to permit the private acquisition of other areas whose ownership would result in monopolistic control of other

resources of great value. An excellent illustration is the effort to obtain control of watering holes in the semi-arid regions of the Southwest. The control of single water holes on many of the national forests carries with it the control of large adjacent areas of dry range, often 25,000 to 50,000 acres, which cannot be used unless the stock has access to the water. The practical effect would be to deprive all stock growers, except the entryman who acquires the water, of the use of the range. Many grazing monopolies have been developed in this manner on the public lands of the West by the location of homestead and pre-emption entries and even of mineral claims. This effort to monopolize range has continued since the creation of the national forests, by attempts to secure, under the forest-homestead act and by mineral locations, water holes as chiefly valuable for agriculture. A recent instance on the Kaibab National Forest, Ariz., has been brought to my attention, where mining claims were systematically located so as to control all of the stock-watering places in an enormous area of dry range. These have been patented and are now owned by a large cattle company. Little patches of land surrounding seeps and lakes in these regions are usually arable. The Nelson amendment adopted by the Senate would require them to be opened to entry. Such entries would not be made for agricultural purposes, but for the monopolistic control of grazing lands.

LAKESIDE ENTRIES.

Many areas in the national forests possess great

value to the public for summer camping grounds and recreation. They may or may not be capable of cultivation. Their special value lies in the control of the use and enjoyment of natural features of the forests.

Four hundred thousand people annually resort to these mountain regions for recreation. Many areas on the shores of lakes and large streams, in sections of exceptional scenic beauty, and in mountain meadows that afford the only pasturage for pack and saddle horses, serve their highest usefulness as camping grounds for the public. The private control of such lands, permitting the collection of fees or tolls for uses now secured free from the Government, would be of no small value to entrymen. Many efforts have been made to secure tracts of this character under the forest homestead act. Some are entirely unsuited by soil and climate for farming purposes; others are, in whole or in part, susceptible of cultivation. Powerful pressure has been used upon the Forest Service to throw open tracts on the shores of many of the principal lakes in the national forests, which include the best camping grounds in the vicinity and largely control the use of the lakes themselves.

Fortunately there is no law that permits the private acquisition of lands of this sort that are not suited for agriculture. But even if their tillage is possible, the Forest Service has declined to open them to entry, when the result would be monopoly of camping and recreation grounds and the prevention of free enjoyment of these privileges by the public. Such lands are not wanted for

agriculture. They are not chiefly valuable for agriculture, as the present law requires, because of the far greater service they are rendering to increasing numbers every year for recreation and health.

The amendment adopted by the Senate made the opening of such lands mandatory wherever cultivation is possible. The net result would be, not settlement, but the monopoly by shrewd entrymen of valuable privileges now shared by the people at large.

Small tracts here and there must be used by the Forest Service in protecting and administering the national forests. These areas consist in part of stations where the field force is housed and forage produced as far as practicable for the horses, which must be maintained by the Government for the protection of the forests and by rangers for their official duties. It is essential that the rangers be stationed on the forests directly where their work is to be done. The forests can not be protected without placing rangers on them at strategic points. Over and over again fires that would have caused enormous damage have been extinguished promptly, because of the proximity of a well-located ranger's headquarters. Pastures and facilities for storing fire-fighting supplies are equally essential.

To administer the forests, right of way for roads, trails, and telephone lines must be retained. National-forest timber can not be utilized without sites for sawmills and banking grounds. Land for all of these pur-

poses is not only needed by the Government in protecting and administering the forests, but needed by the public in using them. Nurseries where young trees are grown for reforestation must be had. Thirty-one are now maintained, aside from a number of stations for collecting, extracting, and storing forest-tree seed. Without these facilities little or nothing can be done toward the reforestation of denuded lands. The areas now set aside for all administrative purposes average but 1 to each 88,000 acres of national-forest land. There is serious danger that the more intensive administration of the forests which the future will demand will find the Government inadequately equipped with sites for these essential needs. If any error has been committed, it is the release to settlers of too many tracts that will ultimately be required for public use.

Possibly 50 per cent of the ranger stations contain some arable land. Some twenty-five hundred of them have been improved—the headquarter stations with barns, cabins, and fencing, and by clearing and cropping the land; the nurseries with water systems, intensive cultivation, fertilizing, and suitable buildings; the patrol stations with lookout towers, cabins for storing fire-fighting tools, and small pastures. Over $270,000 have been expended for this equipment, which is absolutely essential to the maintenance and usefulness of the national forests.

WHAT THE SENATE PROPOSED.

Frequent efforts have been made to force the open-

ing to entry of tracts selected and even improved by the Government for these purposes. Certain homesteaders not only want land but stipulate in the order that it shall be provided with a substantial house and barn, and that the rough work of clearing, fencing, and raising the first unremunerative crops shall be done in advance. It has remained for the Sennate to propose a law which, if enacted, would require that this entire equipment of land and improvements be given out of hand to the first applicants, wherever arable land is involved. More than this, the United States would be forever prohibited from reserving for its own use an acre of agricultural land within the national forests. Such action would paralyze the administration of the forests in practically every particular. It would be as reasonable to expect the city of New York to furnish efficient fire protection while forbidding the use of a square foot of land within its borders for housing fire-fighting apparatus.

Nothing could indicate more clearly the purposes of the forces massed behind the latest attack upon the national forests. Men who thus propose to cripple their protection and administration have but one object in view—the breaking up of the forests altogether and the end of conservation as applied to these nationaal resources.

The Forest Service is providing for the settlement of all land in the national forests that is more valuable for agriculture than for other uses and that is not required by the Government in administration. The sys-

tematic classification of such areas was begun in some of the northwestern forests two years ago. Such a classification, under the provisions of the forest homestead act, has subsequently been extended into each of the six national forest districts. It is being prosecuted at the present time as rapidly as the funds made available by Congress will permit.

Under this classification, areas that are essential for public purposes in the administration and protection of the national forests, areas that are chiefly valuable for the control of water powers, and areas that are required for the general use of the public will be reserved. All other lands having value for agriculture will be opened to the homesteader. If their present value for timber greatly exceeds their value for farming, and would invite speculation rather than bona fide settlement and cultivation, the timber will be removed under sale at the earliest possible time and the land then opened for entry. This method has been followed on a number of national forests during the past two years. It has eliminated timber speculation and promoted substantial and permanent agricultural development.

Localities where homesteads have been entered under this plan stand out today in sharp contrast to regions where heavily timbered lands were entered by speculators prior to the creation of the national forests and subsequently acquired and held by lumber interests.

This is the wisest and most logical method of segregating agricultural lands from the national forests. It

is the only method that will insure the acquisition of such lands by settlers in good faith for agricultural use and that will protect the public from monopoly of timber and power. It is my strong conviction that legislation on this subject should be in harmony with this policy and with the provisions of the forest homestead act, which authorizes the Secretary of Agriculture to deal with the question in exactly this way.

FALLACIES ABOUT FOREST LANDS.

Legislation like that adopted by the Senate, on the other hand, would require the opening to homestead entry of lands primarily more valuable for other purposes than for agriculture. Such legislation would not help agricultural settlement in the West or American citizens who are seeking homes. However disguised under the alleged interests of the home builder, it is in effect a direct attack upon the fundamental policy of reserving national resources like timber and water power under public control, to be administered for the general welfare. It would throw these resources open to private speculation and monopoly. It would aid not the homesteader, but the lumber company, the water-power company, the live-stock company, and many other large interests.

The enactment of such legislation will begin the breaking up of our remaining publicly owned national resources. The entire conservation policy is at stake. This should be thoroughly understood now by Congress and by the people.

Such a step should be taken deliberately and with full knowledge of its consequences. It should be for the people of the United States to choose whether they wish this backward step taken in the policy hitherto followed.

There are now three distinct and well-defined lines of attack on that policy. One is the demand that all the national holdings be parceled out as gifts to the several States. Another is the charge that the national forests are largely made up of lands that do not grow and can not be made to grow a forest cover.

The third charge that they are largely agricultural. In 1911 dismemberment of the national forests was threatened by the Heyburn amendment to the agricultural appropriation bill, which would have required all land not actually bearing at the present time 4,000 feet of merchantable timber to the acre to be thrown out. In the present year, besides the agricultural lands amendment, legislation was proposed to hand over national forests to State ownership.

The net result of a long campaign of misrepresentations has been to create a belief not only that the forests are largely agricultural lands, but also that they are largely lands on which forestry can not be practiced. This belief is now sufficiently general to make sudden legislation likely at any session of Congress.

In this way an amendment of far-reaching results could easily be passed, with little discussion and no real appreciation on the part of many voting for it of its true

character and disastrous effects. The national forests are not blocking development. They are blocking speculation, shortsighted exploitation, and spoliation of the people at large.

Planks looking to the overthrow of the national forest policy have been introduced into the platform of one of the great political parties. It is time for the public to recognize the facts in the situation.

The article as printed in the Saturday Evening Post is not printed, but above articles are certified up by order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 346

is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service—Henry S. Graves, Forester. "Properties and uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir," and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 347

is Circular 150, issued January 28, 1909, by U. S. De-

partment of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," by E. H. Frothingham, Forest Assistant. Page 18 of Circular 150 purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade Range.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 348

is a circular or bulletin issued by the Department of Commerce and Labor, Bureau of the Census, E. Dana Durand, Director. Forest Products, No. 2 Lumber, Lath and Shingles—1910. Compiled in co-operation with the Department of Agriculture: Forest Service, Henry S. Graves, Forester. Issued February 20, 1912. Part of this exhibit is printed in the testimony of Homer D. Angell, volume 6, page 2795 et seq of record, being parts of pages 4, 5 and 6 of this pamphlet, diagram page 7, and 2 paragraphs following, and parts of pages 9, 10, 13 and 17.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 349

consists of silvical leaflets, numbers 2, 4, 5, 7 and 8, all issued in 1907 by the U. S. Department of Agriculture, Forest Service,—Gifford Pinchot, Forester, and purporting to describe Port Orford Cedar, (range and oc-

currence), White Fir (range and occurrence), Lowland Fir (range and occurrence), Noble Fir (range and occurrence), Red Fir (range and occurrence).

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 350

purports to contain reports of Land Examiner W. J. Lander, of dates March 14, 1912, November 25, 1911, October 6 and 7, 1907, May 24, 1907, May 25, 1907, upon forms of Oregon & California Railroad Company, Land Department, reporting upon specific parcels of land,—and last three reports purporting to give estimates of timber, etc., on specific tracts of land.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 351

is a statement purporting to show lands examined, cruised and reported upon by D. C. McLennan, showing present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 352

purports to be a table showing unsold Congressional lands of the Oregon & California Railroad Company

as assessed and taxed, as shown by tax rolls of Multnomah county, for the years 1875 to 1890, both inclusive, and is as follows:

UNSOLD CONGRESSIONAL LANDS OF THE OREGON AND CALIFORNIA RAILROAD COMPANY AS ASSESSED AND TAXED, AS SHOWN BY TAX ROLLS OF MULTNOMAH COUNTY

Year	Acres	Valuation	Tax.
1875	1112	$1080.00	$15.66
1876	1112	1080.00	16.20
1877	984	970.00	14.55
1878	5155	2085.00	36.48
1879	4877	3575.00	62.56
1880	4643	3325.00	58.18
1881	4522	3350.00	53.60
1822	3910	3250.00	47.13
1883	3080	2450.00	38.22
1884	2766	2350.00	41.36
1885	2566	2250.00	33.07
1886	2625	2250.00	27.78
1887	2406	2625.00	43.83
1888	2486	2625.00	45.15
1889	2137	4100.00	74.62
1890	2485	16960.00	*
* Total Tax			$358.88
Deducted, act. Double Assessment			$243.87
			115.01

DEFENDANTS' EXHIBIT 353

purports to be a statement of lands examined, cruised and reported upon by A. W. Rees, showing acreage of, in present condition, classified as timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court, and stipulation of parties.

DEFENDANTS' EXHIBIT 354

purports to be a report of A. W. Rees as timber cruiser, consisting of three sheets, showing timber estimate and description of various parcels of lands.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 355

purports to be a statement of portion of lands examined, cruised and reported upon by F. A. Elliott, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 356

purports to be a statement showing lands examined by S. A. Carmichael, showing area in present condition,

timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 357

purports to be a statement showing lands examined, cruised and reported upon by T. J. Cronin, C. A. Cavell, M. F. McCowan, John D. McDonald, Ben Peck and William W. Penoyar, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 358

purports to be report of Land Examiner A. W. Rees of a particular tract of land.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 359

is a statement purporting to show average assessed value per acre of unsold lands of the Oregon & California Railroad Company, for each year from 1892 to 1911, inclusive, and is as follows:

Year	Average Value Per Acre
1892	$ .75
3	.85
4	.75
5	.78
6	.99
7	.95
8	.95
9	.86
1900	.87
1	1.02
2	1.33
3	1.94
4	1.77
5	2.94
6	4.56
7	7.83
8	8.29
9	8.34
1910	9.64
1	10.32
highest—Columbia	$31.33
lowest—Tillamook	4.74

DEFENDANTS' EXHIBIT 360

is the First Annual Report of the State Forester to the Governor of Oregon, 1911, F. A. Elliott, State Forester, transmitted to the Governor December 1, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 361

is a pamphlet entitled "The Forests of Oregon" by Henry Gannett, published by Department of the Interior, U. S. Geological Survey, Charles D. Walcott, Director, Washington, Government Printing Office, 1902. This exhibit also has in pocket attached a map of the state of Oregon purporting to show the classification of lands and forests prepared by Gilbert Thompson, from information obtained by A. J. Johnson, 1900, and purports to show on this map, according to legend: Timberless area, Woodland, timber ranging from

0 to 5000 ft. board measure, per acre
5000 to 10000 ft. board measure, per acre
10000 to 25000 ft. board measure, per acre
25000 to 50000 ft. board measure, per acre
50000 ft. board measure, and over, per acre;

Barren, Burnt, Cut timber—not restocking, cut timber —restocking, and northern limit of redwood.

This exhibit and map not printed, but certified up under order of Court and stipulation of parties.

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DEFENDANTS' EXHIBIT 362

is as follows:

STATEMENT SHOWING TOTAL AREAS EXAMINED BY THE CRUISERS NAMED AND SHOWING THE PRESENT CONDITION OF SUCH AREAS AND THE PROBABLE CONDITION AFTER SUCH AREAS MAY BE DENUDED OF THEIR PRESENT TIMBER GROWTH.

Field Agent	Present Condition				Condition When Denuded	
	Examined Acres	Timber Acres	Grazing Acres	Agri. Acres	Grazing Acres	Agri. Acres
A W Rees	16,351	7,124	6,282	2,945	10,866	5,485
A W Rees	31,907	29,492	2,295	120	30,740	1,167
D C McLennan	170,985	151,725	13,685	5,525	142,025	28,910
D C McLennan	17,104	8,479	8,192	433	15,916	1,188

Field Agent	Examined Acres	Present Condition Timber Acres	Grazing Acres	Agri. Acres	Condition When Denuded Grazing Acres	Agri. Acres
L D McLeod	65,681	24,108	37,125	4,448	57,506	8,175
S C Bruce	170,809	134,312	27,133	8,864	132,669	37,640
S A Carmichael	89,737	56,756	30,704	2,277	84,599	5,138
C A Cavell	55,618	52,146	3,000	472	46,752	8,866
M F McCown	9,755	8,100	1,655		9,755	
T J Cronin	3,941	3,253	446	242	3,258	683
Ben Peck	13,664	12,592	1,000	72	12,544	1,120
Jno. D McDonald	10,206	10,206			10,206	
Wm. W Penoyar	4,280	3,850	685	195	3,395	885
F A Elliott	2,060	1,878	157	25	1,948	112
	661,498	503,521	132,359	25,618	562,179	99,319
		76%	20%	4%	85%	15%

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DEFENDANTS' EXHIBIT 363

is a map of the State of Oregon, published by J. K. Gill Co. of Portland, Oregon, purporting to show in red outline of Oregon & California Railroad Company, and of land grant made by Act of Congress approved July 25, 1866; and in green outline of Oregon Central Railway Company, West Side, and limits of land grant approved by Act of Congress May 4, 1870.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 364

is form used by N. H. Martin in making reports on lands, dated October 28, 1912.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 365

is Scarborough's Census Map of Washington and Oregon, purporting to show in different colors, counties, cities, villages, postoffices, steam and electric railways, with stations and distances between stations, and other features, complete index to all places on map, with population according to Census of 1910. Published by the Scarborough Company, Indianapolis, Indiana.

This map is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 366

is a map purporting to show the location of the timber lands on the public domain (approximate), June 30, 1883, to accompany "Public Domain" by Thomas Donaldson. This map purports to show in green colors the locality of the timber lands, and includes therein Oregon and Washington west of and including the Cascade Mountains.

This exhibit is not printed but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 367

is a photograph: View of Oregon City—Willamette Falls. Railroad graded under Elliott in 1868, and is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 368

purports to be memorandum of agreement made April 23, 1867, between the Oregon Central Railroad Company and Albert J. Cook, for the construction of 159 miles of railroad and is as follows:

Memorandum of an Agreement made this 23d day of April in the year of our Lord One thousand eight hundred and sixty seven (1867) by and between the Oregon Central Railroad Company organized under and in accordance with the general laws of the State of Oregon, of the first part & Albert J. Cook of the second part—

WITNESSETH

That whereas the party of the first part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon South to the California line; and whereas the party of the second part doth agree and hereby agrees with the party of the first part to build and equip one hundred and fifty miles of said railroad, with all necessary rolling stock, from Portland South through the Willamette Valley for the sum of Five Millions Two Hundred and Fifty Thousand Dollars ($5,250,000.00) reckoned at gold or specie value, that is to say if payment from time to time be made in national currency, now so called it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the second part doth further agree with the party of the first part to build and equip with rolling stock complete for the working of the same, that is to say the road shall be built upon a uniform gauge of four (4) feet eight (8) and one half (½) inches, the maximum grade not to exceed eighty feet (80 ft) per mile, and a minimum curvature of ten degrees (10 deg.) The width of the roadbed to be eleven feet on the surface. The iron used shall be the best quality known as the T rail weighing at least forty five pounds per linear yard. The ties shall be of the best wood to be obtained

for strength and durability, not less than six by eight inches, and eight feet in length, to be laid at the rate of two thousand six hundred and forty feet per mile. The amount of rolling stock shall consist, for the first division of twenty five miles, extending from Portland to the French Prairie of two first class locomotives weighing not less than sixteen tons each, two first class passenger cars, two baggage or express cars. The next division of about twenty five miles reaching to Salem, one first class locomotive of not less than sixteen tons weight, two first class passenger cars, one baggage car, twelve box cars and two platform cars. For the next division of about twenty five miles reaching to Albany, one first class locomotive, weighing not less than twenty six tons, two first class passenger cars, one baggage car, twelve each box and platform cars. For the next division of about ten (10) miles reaching to near Corvallis, one first class locomotive weighing not less than twenty six tons, two first class passenger and six box cars. For the next division of about thirty miles to Eugene City, one first class locomotive weighing not less than thirty tons, three first class passenger, one baggage and ten each box and platform cars. For the last division of about thirty five miles, two first class locomotives weighing not less than thirty six tons, four passenger cars, twenty box cars and six platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the Company at the rate of one for every ten (10) miles, water tanks as often as once in every twenty miles, where water

can conveniently be had; such locations to be designated by the company. At the large towns designated as the termini of the different divisions, suitable buildings shall be erected for the accommodation of passengers and freight. Depots of ample size to accommodate the business of the road shall be erected in a substantial and durable manner, also engine houses of a sufficient capacity for the safe housing of all the engines.

The contractors shall erect and furnish suitable machinery for a repair shop at a point designated by the company. The president of the company and the engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road.

And the party of the second part doth agree to receive payment for the building and equipping said one hundred and fifty miles of railroad, in the company's first mortgage railroad bonds, payable in twenty years from the date of the same with interest semi-annually, *Provided*, that in case the company while the road is being constructed, is unable from its resources to pay the interest on its bonds issued to the said party of the second part, the same shall be payable in the first mortgage bonds of the company of regular series and character at their par value. All said bonds to be secured by a first or bottom mortgage on said one hundred and fifty miles of railroad and on all the rolling stock thereof. And such amounts in specie as the company may provide. And the party of the first part hereby promises, covenants and agrees with the party of the second part to pay

the sum of five millions two hundred and fifty thousand dollars receivable at gold or specie value as aforesaid, to the party of the second part or to its assigns for constructing and equipping with rolling stock said railroad from Portland in the State of Oregon to the head of the Willamette Valley or a distance of one hundred and fifty miles, and the party of the first part promises, covenants and agrees with the party of the second part to issue or cause to be issued the first-mortgage, gold-bearing railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage, on said one hundred and fifty miles thereof, and on the rolling stock of the same. Interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid. And the said party of the first part agrees that said bonds shall be issued in such form and sums, and to be endorsed if need be to make the same negotiable and satisfactory; and that the engineers employed are to be paid by the party of the second part; and shall be nominated by the party of the second part if they see fit to nominate the same, and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the first part further agrees to deposit in some safe bank in the State of New York designated by the party of the second part, fifteen thousand dollars ($15,000.00) per mile of the amount of said railroad bonds to be delivered to the party of the second part, in payment aforesaid as the Bills of Lading

for iron, rolling stock & other materials shall from time to time be accepted by such engineer; *Provided*: That the company shall not sell or dispose of their regular first mortgage bonds at less than their par value. And the party of the first part further agrees to make monthly payments upon the work as approved by the engineer, reserving twenty per cent of the amount of work done each month until the division is accepted by the commissioners.

And the party of the first part further agrees to use every means in their power to obtain as much cash and money aid from the people of Oregon as is possible for the furtherance of this enterprise.

And the party of the first part further agree to issue two millions of preferred stock of the Oregon Central Railroad Company, bearing interest at seven per cent per annum and deliver the same to the party of the second part immediately after the signing of this contract.

And it is further understood and agreed between the parties hereto, that the work shall be commenced within one year after the signing of this contract and the whole one hundred and fifty miles completed within five years thereafter.

And it is also understood that the common stock of the O. C. R. R. Co. shall be offered for sale to the people of Oregon at ten cents on the dollar, and at the expiration of six months from the commencement of work on the road subscriptions at the same rate shall be received

from any parties whomsoever for the amounts then remaining unsold.

In testimony whereof we Geo. L. Woods, President and Sam'l A. Clarke, Secy., on behalf of the Oregon Central Railroad Company as authorized by the Board of Directors, have hereunto affixed our hands and the seal of said Company, on the part of said party of the first part to the foregoing contract, this the twenty third day of April A. D. 1867, at the office of said Company in the City of Salem, Marion Co., Oregon.

(35 cents in revenue stamps)

(Seal)

Sam'l A. Clarke
Secretary
O. C. R. R. Co.

Geo. L. Woods
President
O. C. R. R. Co.

Witness
T. R. Brooks

J. H. Parker

And for the party of the first part
Albert J. Cook, by
S. G. Elliott, his
Attor'y in fact

(Endorsement on back).

In consideration of the sum of one dollar to me in hand paid, by S. G. Elliott, of San Francisco, the receipt whereof is hereby acknowledged, I do hereby transfer, assign forever, all my right, title or interest in and to the within instrument.

Witness my hand and seal this second day of May, A. D. 1867.

In presence of Albert J. Cook
W. D. Litchfield
(5 cents)
(revenue stamp)

(Endorsement on back of 5th page).

For and in consideration of the sum of Three Thousand ($3000) Dollars to me paid by N. P. Perrine of the City & County of San Francisco, State of California, (the receipt of which before the execution of this assignment is by me acknowledged) I do hereby assign transfer and set over said N. P. Perine the undivided half of seven-tenths of the within & foregoing instrument being three & one-half tenths thereof, excepting the preferred stock of said O. C. R. R. Company.

In witness whereof I have hereunto set my hand & seal this 20th day of May A. D. 1867.

S. G. Elliott (Seal)

In presence of)
)
Walter Van Dyke)

(5 cent)
(revenue stamp)

(Cancellation on front page in red ink; signatures in black ink).

In consideration of one Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto hereby acknowledged and in consideration of other valuable considerations moving from each to the other, it is hereby agreed

between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled, set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Railroad Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached this 29th day of March A. D| 1870.

Witness present
J. H. Mitchell
M. N. Chapman

Ben Holladay & Co.
Oregon Central Rail Road Company
By I. R. Moores
President

(Seal) Oregon Central RailRoad Company
(Incorporated)
(Oregon Central) By Geo. E. Cole
(Railroad Co.)
(1867) Secretary

(Filing Marks on back).

Filed Nov. 24, 1875
Geo. L. Story Clerk
By R. L. Durham Deputy.

Filed June 19" 1876
D. H. Murphy
Clerk.

DEFENDANTS' EXHIBIT 369

purports to be memorandum of agreement of date May 12, 1868, between the Oregon Central Railroad Company and A. J. Cook & Company, for the construction and equipment of 210 miles of railroad, and is as follows: Memorandum of an Agreement made this 12 day of May in the year of our Lord One Thousand Eight Hundred and Sixty Eight by and between "The Oregon Central Railroad Company" organized under and in accordance with the general laws of the State of Oregon of the First Part and the firm of A. J. Cook & Co. of the Second Part:

Witnesseth,

That whereas the party of the First Part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon, South, to the California line, and, *whereas,* the said company of the First Part did contract with the party of the Second Part to build one hundred and fifty miles of the road, commencing at Portland and extending up the Willamette Valley a distance of One Hundred and Fifty miles, said road to be completed within five years from the date thereof; and *whereas,* the party of the First Part are desirous of extending the road to the State line between Oregon and California and as a means of securing the early completion of the same have entered into the following agreement with the said firm of A. J. Cook & Co. upon the following terms.

The party of the Second Part doth agree and hereby agrees with the party of the First Part to build & equip two hundred and ten miles of said railroad, more or less, to or near the State line, with all necessary rolling stock, from the head of the Willamette Valley, commencing at the terminus of the first division of one hundred and fifty miles, and to continue the construction of the same to the South boundary line of Oregon as soon as the first division shall be completed, for the sum of Twelve millions, one hundred and twenty eight thousand dollars ($12,128,000.) reckoned at gold or specie value, that is to say, if payment from time to time be made in national currency, now so called, it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the Party of the Second Part doth further agree with the Party of the First Part to build and equip with rolling stock complete for the working of the same, that is to say, the road shall be built upon a uniform gauge of four (4) feet, eight (8) inches and one half (½), the maximum grade not to exceed 80 feet per mile, except twelve (12) miles through the Canyon, which twelve (12) miles shall not exceed one hundred (100) feet per mile, and a minimum curvature of (10 deg) ten degrees; the width of the road bed to be eleven feet on the surface. The iron used shall be the best quality known as "T" rail, weighing at least fifty pounds per linear yard; the ties shall be of the best wood to be

obtained for strength and durability, not less than six by eight inches and eight feet in length, to be laid at the rate of two thousand six hundred & forty (2640) per mile.

The amount of rolling stock shall consist of ten first class locomotives, weight not less than twenty one each, —to be furnished at the rate of one for every twenty miles,—and twenty five first class passenger cars—furnished at the rate of one for every ten miles,—four baggage cars, forty box cars and twenty platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the company, at the rate of one for every ten miles; water tanks as often as one in every twenty miles where water can conveniently be had. At the large towns suitable buildings shall be erected for the accommodation of passengers and freight, also engine houses of a sufficient capacity for the housing of all the engines.

The President of the Company and the Chief Engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road, and the contractors shall have the right & free use of the railroad from Portland to the extreme southern terminus for the transportation of all the material required in said work, also, as well, all men, horses, mules, cattle, sheep, hogs and provisions of any & every kind required by said party while constructing said road; also all iron, iron rails, bars, castings, spikes, chains switches, machinery, frogs, car wheels, and all timbers for bridges,

trestle work, cattle guards, cross ties and timbers for all depots, stations, and all other material required or to be used, with every thing else required by said contractors in the construction of said road, until said two hundred and ten miles of said road or reaching to the California line, be it more or less, has been completed at the same rate per mile. And the party of the second part shall be entitled to the earnings of the road until each section of twenty (20) miles is accepted by the company.

And the Party of the First Part promises, covenants and agrees with the party of the second part, to issue or cause to be issued the first mortgage gold bearing railroad bonds of The Oregon Central Railroad Co., the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid, and the said party of the first part agrees that said bonds shall be issued in such forms and sums and to be endorsed if need be to make the same negotiable and satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the First Part further agrees to execute a mortgage of thirty two thousand dollars per mile ($32,000.) as a first mortgage on the whole distance of two hundred and ten miles (210) commencing at the

terminus of one hundred and fifty miles at the head of the Willamette Valley, extending to the State line between Oregon & California, and also to execute a second mortgage for twenty five thousand seven hundred and fifty two ($25,752.) dollars per mile.

The party of the first part promise and agree to execute the first mortgage bonds at the rate of twenty five thousand (25,000) dollars per mile, and deliver one million dollars of the same to the party of the second part as soon as the said party of the second part shall report themselves in readiness to enter upon the commencement of the construction of the road under this contract, and exhibit satisfactory evidence that they have purchased materials and stock equal in value to the amount of bonds so issued and to make advancement of bonds at the rate of twenty five thousand (25,000) dollars per mile, for distance of fifty miles in advance of work on the road whenever the party of the second part may request the same & give evidence as required above as to the purchase of materials, or of work performed, and to make monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said engineer, until a distance of twenty miles shall be completed, when the company shall pay the full amount of fifty seven thousand seven hundred and fifty two dollars per mile to said party of the second part as provided in the first part of this contract.

It is understood that the company will exert itself to

obtain aid from the State of Oregon to assist in the building of this road.

It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one hundred and fifty miles shall be completed.

The stock shall be in the following form, to wit:

Capital Stock $11,000,000

$3,000,000. Preferred Stock (non-assessable) Gold Interest bearing

(Vignette) & $8,000,000. Common or Assessable Stock

.....Shares
.....Each

No. Second Series Shares

The Oregon Central Railroad Company

Salem Marion County

State of Oregon April 1868

This Certifies that Albert J. Cook & Co. are entitled to .... shares of the Capital Stock of The Oregon Central Railroad Company, transferrable on the Books of the Company subject to the provisions of the By Laws, by endorsement hereon & surrender of this certificate. The holder of this Second Series Certificate is entitled to 7 per cent yearly interest in gold upon the amount of $3,000,000. advanced by the contractors as a working capital under Second Contract in the construction of the Company's road. Said Second Series Certificates of Stock are issued as collateral security for that amount and to be

non-assessable, the payment of which is secured by a Resolution in the following form *"Resolved,* by the Board of Directors of The Oregon Central Railroad Company, that the President and Secretary are hereby requested to execute $3,000,000. of *non-assessable Preferred Stock,* and deliver the same to the contractors as part payment for the construction of the road, and as collateral security for moneys advanced by said contractors as a working Capital. Said stock to be *non-assessable* and to bear interest at the rate of 7 per cent per annum, payable in gold coin, and there is hereby set apart as a sufficient amount out of the net earnings of the second division of the road, extending from the end of the first division to the Oregon State line, to pay the same.

(Vignette)

Secretary President

The parties hereto agree that the terms of this contract shall come in force as soon as the first One Hundred and Fifty miles shall be completed & that it shall be completed within five years from that date.

And in relation to all the terms, stipulations, covenants and agreements of the foregoing contract, it is hereby expressly agreed, that on the completion of the present contract for 150 miles of road, it shall be optional with The O. C. R. R. Company, party of the First Part hereto, to surrender to the contractors the road herein provided for and assign to them all the rights of the company therein, in which case the said contractors shall

accept the same in full satisfaction of all claims arising under the contract as against said Company, or their road of 150 miles so now being constructed, and all facilities within their power shall be extended by said O. C. R. R. Company to enable said contractors to hold, own & operate said extension of said road under the laws of Oregon.

Witnessed by
Geo. Anderson
E. D. Towl

(Seal
(Oregon
(Central
(Railroad)
(Co.
(Incor-
(porated
(1867)

I. R. Moores President
O. C. R. R. Co.

S. A. Clarke
Secretary O.C.R.R.
Company

A. J. Cook & Co.

(Cancellation on front page in red ink; signatures in black ink).

In consideration of One Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto acknowledged and in consideration of other valuable considerations moving from each to the other. It is hereby agreed between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Rail Road Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached

this 29th day of March A. D. 1870.

Witness present
J. H. Mitchell
M. N. Chapman

(Seal)
(Oregon Central)
(Railroad Co.)
(Incorporated)
(1867)

Ben Holladay & Co.
Oregon Central Rail Road Company
By I. R. Moores
President
Oregon Central Rail Road Company
By Geo. E. Cole
Secretary.

(Filing Marks on back).

Filed Nov. 24 1875

Geo. L. Story Clerk
By R. L. Durham
Deputy

Filed June 19" 1876

D. H. Murphy
Clerk.

(40 cents in revenue stamps)

DEFENDANTS' EXHIBIT 370

is an assignment from Albert J. Cook to S. G. Elliott of his contract of April 23, 1867, with the Oregon Central Railroad Company, and is as follows:

Know all men by these presents: That I Albert J. Cook of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to me in hand paid by S. G. Elliott, of San Francisco, of the second part, the receipt whereof is here-

by acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said party of the second part, his executors, administrator, and assign, a certain contract with the "The Oregon Central Railroad Company," bearing date the twenty third day of April A. D. 1867 and executed at the city of Salem, Oregon.

In witness whereof I have hereunto set my hand and seal the second day of May A. D. 1867.

Albert J. Cook

Signed sealed and delivered)
)
in the presence of)
)
W. D. Litchfield)

(On margin).

Exhibit "W," attached to S. G. Elliott's deposition.

J. G. M.

DEFENDANTS' EXHIBIT 371

is a photograph, purporting to show "Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868." Used as an exhibit in the case of Holladay and Emmet vs. Elliott et al. This exhibit is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 372

is a map of the Country Club Orchard Tracts, The Rogue River Orchard Company, owners.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 373

consists of certified copies of letters: May 7, 1870, J. D. Cox Secretary, to Hon. Jos. S. Wilson, Commissioner of the General Land Office; May 23, 1870, Jos S. Wilson, Commissioner, to Hon. George H. Williams, U. S. Senate; May 23, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Oregon City, Oregon:—relating to transfer of the Oregon Central Railroad to the California and Oregon Railroad Company. Letter May 20 1872, Willis Drummond, Commissioner, to Hon. C. DeLano, Secretary of the Interior, referring to certain papers filed in his office by George H. Williams, Attorney General, for the purpose of obtaining a construction by the Department of the proviso of the Act of April 10, 1869, amendatory to the Act of July 25, 1866, namely, the 160-acre at $2.50 an acre clause. Copy of this exhibit is as follows:

"M. L. 268839.
"B"
"M. F. H.

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE"
"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of letters "dated May 7th, and 23rd, 1870, and May 20th, 1872, "respectively, are true and literal exemplifications of "the originals and press-copies of letters in this office.

"IN TESTIMONY WHEREOF I have hereun- "to subscribed my name and caused the seal of this office "to be affixed, at the city of Washington, on the day "and year above written.

(Signed) " H. W. SANFORD,
(Seal) "Recorder of the General
"Land Office."

"M. L. 268839 L. G. & R. R.

"DEPARTMENT OF THE INTERIOR

"Washington, D. C., May 7, 1870.

"Sir:

"Evidence has been filed in this Department by Geo.

"E. Cole, Esq., Secretary of the Oregon Central Rail-
"road Company, of Salem, Oregon, that said company
"have sold and transferred all their rights, interests,
"&c. to the California and Oregon Railroad Company,
"of Portland, Oregon.

"Very respectfully,
"Your ob't servant,
"J. D. Cox,
"Secretary.

"Hon. Jos. S. Wilson,
"Com'r of the
"Gen'l Land Office."

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE,

May 28d, 1870.

"Hon. G. H. Williams,
"U. S. Senate.
"Sir:

"Pursuant to your oral request of this morning, I
"have the honor to state, that evidence is on file to the
"effect that the 'Oregon Central Rail Road Company,'
"of Salem, Oregon, have sold and transferred all their
"rights interests, & c. to the California and Oregon Rail
"Road Company of Portland, Oregon, and we have this
"day dispatched such information to the Register and
"Receiver at Oregon City, Oregon, and to be governed
"accordingly in relation to the matter.

"I am sir, very respectfully,
"Jos. S. Wilson, Commissioner."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"May 28, 1870.

"Register & Receiver,
"Oregon City, Oregon.

"Gentlemen:

"I have been advised by the Secretary of the Interior "to the effect that the Oregon Central Railroad Com- "pany of Salem, Oregon, have sold and transferred all "their rights, interests, & c to the California and Oregon "Railroad Company of Portland, Oregon, and you will "be pleased to govern yourself accordingly in relation "to the matter.

"Very respectfully,
Jos. S. Wilson,
"Commissioner.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"May 20th, 1872.

"Hon. C. Delano,
"Secretary of the Interior.

"Sir:

"I have the honor to lay before you certain papers "filed in this office by the Hon. Geo. H. Williams, "Atty. General for the purpose of obtaining a con-

"struction by the Department of the proviso of the Act "of Congress approved April 10th 1869 Stat. 16, p. "47—amendatory to the Act of July 25th 1866, Stat. "Vol 14— p. 239—granting lands to aid in the construc- "tion of a Rail Road and Telegraph line from the Cen- "tral Pacific Rail Road in California to Portland in "Oregon, which reads as follows: 'That the lands grant- "ed by the Act aforesaid shall be sold to actual settlers "only in quantities not greater than one quarter Section "to one purchaser, and for a price not exceeding two dol- "lars and fifty cents per acre.

"As the Company request an expression of opinion "by the Department, the papers are hereby submitted.

"I am sir,

"Very respectfully,

"Willis Drummond,

"Commissioner.

DEFENDANTS' EXHIBIT 374

consists of certified copies of form of deed of European & Oregon Land Company, letter from I. H. Moores, Land Agent, to Hon. Willis Drummond, Commissioner of the General Land Office, of January 28, 1874, and letter of March 18, 1874, Willis Drummond to I. R. Moore, in reference to lands said to have been erroneously patented to the Oregon and California Railroad Company. Copy of this exhibit is as follows:

DEFENDANTS' EXHIBIT 374

"M. L. 268839.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR

"GENERAL LAND OFFICE

"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of papers "and letter, are true and literal exemplifications of the original papers and press-copy of letter in this office.

"IN TESTIMONY WHEREOF I have hereunto "subscribed my name and caused the "seal of this office to be affixed, at "the city of Washington, on the day (Seal) "and year above written.

(Signed) "H. W. SAWYER,
"Recorder of the General Land "Office."

"Deed No. ..... from the

"EUROPEAN AND OREGON LAND COM- "PANY,

"Incorporated at San Francisco, Cal., December 19, "1870,, under and pursuant to the Laws "of California.

"KNOW ALL MEN BY THESE PRESENTS,
"That the European and Oregon Land Company, for
"and in consideration of the sum of .....
"..... Dollars, in legal money of the United
"States, to it in hand paid by .....
"of ..... County, State of Oregon, the receipt
"whereof is hereby acknowledged, doth grant, bargain,
"sell, release and convey unto the said .....
"..... and .....legal
"representatives, the following described real estate,
"to-wit:
"containing according to the United States survey there-
"of .....100 acres, be the same more or less.

"TO HAVE AND TO HOLD, the said premises,
"with all the rights, privileges and appurtenances there-
"unto belonging, unto the said .....
"..... and ..... legal representatives forever.
"Reserving, however, and saving and excepting from
"the transfer made by these presents, any right of way,
"or reservations made by or for the Oregon and Cali-
"fornia Railroad Company.

"The said ..... for
"..... and ..... legal representatives hereby
"covenanting and agreeing that they shall and will con-
"struct and maintain along the lines of the said Oregon
"and California Railroad, or any of its branches, wher-
"ever the same may adjoin or traverse the above de-
"scribed premises, a good and substantial fence, suffi-
cient to turn cattle.

"AND WHEREAS, the Oregon and California "Railroad Company, did, on the fifteenth day of April, "A. D. one thousand eight hundred and seventy, make, "execute and deliver to Milton S. Latham, Faxon D. "Atherton and *William Norris*, of the City of San Fran- "cisco, a certain Trust Deed, of that date, which is re- "corded in the office of the County Clerk of Multnomah "County, in the State of Oregon, wherein said Company "conveyed to the said Trustees, for the uses and purposes "in said Trust Deed mentioned, among others the lands "hereinbefore described.

"AND WHEREAS, the said Trustees, Milton S. "Latham, Faxon D. Atherton and William Norris, did "on the twenty-eighth day of March, A. D. one thousand "eight hundred and seventy-one, make, execute, and de- "liver to the European and Oregon Land Company, a "certain Indenture (to which said European and Ore- "gon Land Company and the Oregon and California "Railroad Company were parties, accepting and ratify- "ing the same) which is recorded in the offices of the "County Clerks of Multnomah, Clackamas, Marion, "Linn and Douglas ..... "Counties, in the State of Oregon, whereby for the uses "and purposes in said Indenture set forth, the said "Trustees conveyed to the said Land Company, among "others, the lands hereinabove described:

"AND WHEREAS, the said European and Ore- "gon Land Company have sold and conveyed to the said ..... and ..... legal repre-

"sentatives, the above described real estate:

"NOW, THEREFORE, KNOW ALL MEN "BY THESE PRESENTS, that we, the said Milton "S. Latham, Faxon D. Atherton and William Norris, "mentioned in said Trust Deed and Indenture, above "referred to, in consideration of the sum of..... "..... Dollars, in Gold Coin of the United "States to us in hand paid by the said European and "Oregon Land Company, and the receipt whereof is "hereby acknowledged, do hereby remise, release and "forever quit-claim, unto the above mentioned grantee "of the said Land Company, and to ..... legal rep- "resentatives, the real estate hereinabove described, to be "by them held free and exempt from all liens, incum- "brances and charges of said Trust Deed and Indenture, "but subject however to the reservation and condition "as to rights of way and fencing hereinabove recited.

"IN WITNESS WHEREOF, the said European "and Oregon Land Company has caused these presents "to be subscribed by its President and its Corporate "seal to be hereto affixed and attested by its Secretary; "and the said Trustees have hereunto set their hands, "all at the City of San Francisco, in the State of Cali- "fornia, on this .... day of ..... in the year one "thousand eight hundred and ....

"In the presence of .....

..... President E. & O. Land

..... Company.

.....)
.....) Trustees
.....)

"Attest, ...

"Secretary.

"M. L. 268839—D—8.

"STATE OF CALIFORNIA)
) ss
"CITY AND COUNTY OF SAN FRANCISCO)

"Be it remembered, that on this .... day of ..... "A. D. 18...., before me a Commissioner of Deeds for "the State of Oregon, duly commissioned and sworn, ap- "peared the European and Oregon Land Com- "pany, by ..... its President, and..... "its Secretary, who were personally known to me to be "the identical persons whose names are subscribed to the "foregoing Instrument as President and Secretary of "the said Land Company, and then and there acknowl- "edged the signing and ensealing of the within Instru- "ment, to be their voluntary act and deed, and the volun- "tary act and deed of the said Land Company. And "on the ..... day of ..... A. D. 18...., like- "wise personally appeared before me, the within named "Milton S. Latham, Faxon D. Atherton and William "Norris, personally known to me to be the Trustees de- "scribed in, and who executed the foregoing Instru- "ment, and severally acknowledged before me that they "executed the same as such Trustees freely and volun- "tarily, and for the uses and purposes therein set forth.

"IN WITNESS WHEREOF, I have hereunto "set my hand and affixed my official seal at the City of "San Francisco, the day and year last above written.

. . . . . .

"Commissioner of Deeds for the State of Oregon

"I. R. MOORES, Land Agent.

"OREGON AND CALIFORNIA RAILROAD COMPANY.

"LAND DEPARTMENT.

"Portland, Or. Jan. 23, 1874.

"Hon. Willis Drummond,

"Com'r. Gen'l. Land Office.

"Sir:

"Your letter of the 13th ult. addressed to Mr. Hol- "laday Prest. O. and C. R. R. Co. with Copy of letter "enclosed, relating to certain tracts of land for which "Patents had been issued to the Company and which "were subsequently ascertained to be embraced in valid "claims, and requesting Mr. Holladay to execute a quit "claim Deed to the rightful owners of such lands, has "been referred to me with instructions to inform you, "that *all* the lands enuring to the Company by the terms "of the Act of July 25, 1866, have been disposed of to "the European and Oregon Land Company. a Corpora- "tion organized under the Laws of California, with its "principal office in San Francisco, subject to a mort-

"gage to three Trustees to secure the payment of the "bonded debt of the Board. To give clear title to the "lands and free it from the mortgage lien, it is neces- "sary to obtain title from the E. and O. Land Co. in "which conveyance the Trustees join. One of the Trus- "tees is now in Europe, but will return within the next "sixty days, when the deeds will be duly executed as re- "quested. "The claimants here have been notified of the "condition of facts as stated above. I enclose one of our "blanks which will fully explain the situation.

"Very respectfully,

"I. R. MOORES,

"Land Agent."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE

"Washington, D. C.

"March 18, 1874.

"I. R. Moores, Esq.,

"Land Agt. Oregon & Cal. R. R. Co.,

"Portland, Oregon.

"Sir:

"The Register & Receiver at Oregon City, have re- "cently filed James Waldrup's Donation Certificate No. "4825, covering lots 2 & 3 of sec. 18, Tp. 3 S., R. 3 E., "42.21/100 acres, settlement March 15th 1854.

"It is shown that the above lots were selected under "the act of July 25th, 1866, and inadvertantly patented "May 9th, 1871, to the 'Oregon & California' Rail Road "Company.

"I therefore respectfully request a relinquishment "of said lots on the part of said Rail Road Company, in "order that Mr. Waldrup's certificate may pass for pat- "enting.

"The receipt of your letter of 23d Jany. last is "acknowledged, stating that as soon as the return of one "of the Trustees of your Company from Europe, the "Company would execute 'quits claim' deeds for the "tract requested by my letter of 22d April last.

"I have also to add that the printed form of 'quit "claim' deed in use by the European & Oregon Land "Company, and which accompanied your letter of 23d "January, will be satisfactory to this office.

"Very respectfully,

"Willis Drummond, Commissioner."

DEFENDANTS' EXHIBIT 375

consists of certified copies of telegram, Schultze, Land Agent, to Commissioner of the General Land Office, June 20, 1876; July 14, 1876, letter J. A. Williamson, Commissioner, to P. Schulze, acknowledging receipt of letter and seven quit claim deeds; letter June 28, 1876, Schulze to Commissioner, forwarding deeds; deeds Nos. 146, 147, 148, 149, 150, 151, and 153 for certain tracts,

inadvertantly patented to O. & C. R. R. Co.; letter Schulze to Commissioner July 9, 1877; letter June 10, 1877, J. A. Williamson, Commissioner, to P. Schulze, Land Agent, requesting relinquishments to the United States of certain land; letters April 27, 1877, and April 30, 1877, of same tenor; letters August 10, 1877, and Aug. 10, 1877 same subject; letter Commissioner to Schulze, September 5, 1877, acknowledging receipt of deed; deed No. 152, Trustees to Waldrup; Sept. 6, 1877, Williamson to Register and Receiver, Oregon City, Jan. 28, 1878, Schulze to Commissioner; February 16, 1878, Williamson to Schulze, acknowledging relinquishment; relinquishment Trustees to United States; Aug. 4, 1881, N. C. McFarland, Commissioner, to Schulze, Aug. 25, 1881, Schulze to Commissioner, June 11, 1887, Geo. H. Andrews to Commissioner G. L. O. July 2 1877, Wm. A. J. Sparks, Commissioner, to Geo. H. Andrews; May 9, 1887, deeds O. & C. R. R. Co. to United States; Letter Oct. 21, 1887, A. C. Jones, Receiver at Roseburg, Oregon, to Commissioner G. L. O. October 19 1905, D. A. Chambers, Attorney O. & C. R. R. Co., to Commissioner of the General Land Office. J. H. Fimple, Acting Commissioner, to Chambers November 9, 1905. Deed Aug. 1, 1905, O. & C. R. R. Co. to United States; All in reference to lands erroneously patented.

Copy of this exhibit is as follows:

"M. L. 268889.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE
"WASHINGTON

April 11, 1912.

"I hereby certify that the annexed copies of papers and "letters, are true and literal exemplifications of the orig- "inal papers, letters and press-copies of letters in this "office.

"IN TESTIMONY WHEREOF I have hereunto "subscribed my name and caused "the seal of this office to be (Seal) "affixed at the city of Washing- "ton, on the day and year above "written.

(Signed) H. W. Sawyer,
Recorder of the General Land Office.

"286 6:50 P. M.

"THE WESTERN UNION TELEGRAPH COMPANY.

"Dated Portland, Oregon, June 20, 1876.

"Received at N. E. cor. 14th St. and Penn Ave.,
"Washington, D. C., 6:46 P. M.

"To Hom. Com'r. Gen'l Land Office,
"Washington.

"In reply to letter of third inst. have to state that

"delay in execution of relinquishment is caused by se-
"vere illness of one of our trustees, who has thus far
"been unable to sign deed. Hope to get the deed next
"week.

"Schulzer,
"Land Agt.
"O. & C. R. R."

" 'F'. T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"Washington, D. C.

"July 14, 1876.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal. R. R. Co.,
"Portland, Oregon.

"Sir.

"I have to acknowledge the receipt of your letter
"of 28th ultimo, and seven accompanying 'quit claim'
"deeds executed the the 22nd ultimo, by the Oregon &
"California Rail Road Company in compliance with
"our letter of April 22d, 1873, for the following de-
"scribed tracts, inadvertently patented May 29th, 1872,
"to said Company.

"Lots 1, 2 & 3	Sec.	5,	T 10 S.	R. 2 W.
"SE ¼		13	18	2
"S ½ SW ¼		1	16	3

"W ½ NE ¼ & lot 4,	5	18	3
"W ½ NE ¼ & NW ¼	8	14	5
"S ½ SE ¼	Sec. 29	14 S.	R 5 W.
"NW ¼ of SE ¼	25	16	6.

"Very respectfully,

"J. A. Williamson,

"Commissioner."

"LAND DEPARTMENT

"OREGON and CALIFORNIA R. R. Co.

"Portland, Oregon, June 28th, 1876.

"To the Hon. Commissioner office

"General Land Office.

"Washington, D. C.

"Sir.

"I have the honor, herewith, to transmit to you quit "claim deeds, numbered 146, 147, 148, 149, 150, 151 & "153, for certain tracts which were inadvertently pat- "ented to this company.

"I do not send a deed for Lots 2 & 3 Sec. 13 T. 3S "R 3 East, as requested in your letter of March 13th, "1874 because we have sold one of said tracts, not know- "ing that they were covered by a Donation Entry. It "will take some time before this matter can be straight- "ened up.

"Please acknowledge the receipt of the above deeds.

"Very respectfully,

"P. Schulze,

"Land Agent O. & C. R. R."

"WHEREAS: The lands hereinafter described, were "heretofore Patented by the U. S. Government to the "Oregon and California Railroad Company and em- "braced in a certain Trust deed of said Company to us, "dated the 15th day of April, 1870 and are part of the "Donation land claim of Jeremiah Criss & Starke Dona- "tion Certificate No. 4059 and as such excepted from "the Grant to said Oregon and California Railroad "Company, and

"WHEREAS: The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Jeremiah Criss and Starke, now, therefore, we

"MILTON S. LATHAM.

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees for and in "consideration of the premises do grant, bargain, re- lease, convey and quitclaim unto the said Jeremiah Criss "& Starke and their legal representatives, the following "described real estate, to wit:—The West half of the "North East Quarter and The North West Quarter of "Section Three (3) Township Fourteen South of Range "Five (5) West, Willamette Meridian, situate in Ben- "ton County, Oregon and containing Two hundred and

"and forty-three (243) and 18/100 acres—to have and "to hold the said premises with all rights and appurten- "ances thereunto belonging, unto the said Jeremiah "Criss & Starke and their legal representatives forever."

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"IN PRESENCE OF
". G. L. MURDOCK
". S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June, "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing at San Francisco, in the "State of California, duly commissioned and sworn, per- "sonally appeared the within named Milton S. Latham, "Faxon D. Atherton and William Norris, personally "known to me to be the persons described in and who "executed the foregoing instrument, and severally "acknowledged before me that they executed the same "as such Trustees freely and voluntarily and for the "uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand

"and affixed my official seal the day and year last above "written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"WHEREAS; The lands hereinafter described, "were heretofore Patented by the U. S. Government "to the Oregon and California Railroad Company and "embraced in a certain Deed of Trust of said Company "to us, dated the 15th day of April 1870, and are part "of the Donation land claim of Rogers Pepiot Donation "Certificate No. 1734, and as such excepted from the "Grant to said Oregon and California Railroad Com-"pany, and Whereas; the Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Rogers Pepiot. Now, therefore we,

"MILTON S. LATHAM,

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees, for and in "consideration of the premises, do grant, bargain, re-"lease, convey and quitclaim, unto the said Rogers Pep-"iot and his legal representatives, the following described "real estate, to wit:

"The South half of the South West Quarter of Sec-"tion One (1) Township Sixteen (16) South of Range "Three (3) West, Willamette Meridian, situate in Linn "County, Oregon and containing Eighty (80) 00/100

"Acres.—to have and to hold the said premises with all "the rights and appurtenances thereunto belonging, un- "to the said Rogers Pepiot and his legal representatives "forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June, "A. D., 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing in San Francisco, in the "State of California, duly commissioned and sworn, per- "sonally appeared the within named,

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru- "ment and severally acknowledged before me that they "executed the same as such Trustees fully and voluntar- "ily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand

"and affixed my official seal, the day and year last above written.

S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

"WHEREAS; The lands herein after described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and em- "braced in a certain Trust Deed of said Company to us, "dated the 15th day of April, 1870, and are a part of "the Donation land claim of Cornelius Hackshaw Dona- "tion Certificate No. 1823, and as such excepted from "the Grant to said Oregon and California Railroad Com- "pany, and whereas: The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed to "said Cornelius Hackshaw, Now therefore we.

"MILTON S. LATHAM,

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees for and in "consideration of the premises, do grant, bargain, re- "lease, convey and quitclaim unto the said Cornelius "Hackshaw and his legal representatives the following "described real estate, to wit:

"The South East Quarter of Section Thirteen (13) "Township Eighteen (18) South of Range Two (2) "West. Willamette Meridian, situate in Linn County,

"Oregon and containing one hundred and sixty (100)
"00/100 Acres.

"To have and to hold the said premises with all the "rights, and appurtenances thereunto belonging, unto "the said Cornelius Hackshaw and his legal representa- "tives forever.

"In witness whereof we have hereunto set out hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of
"G. L. MURDOCK
"S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing in San Francisco in the "State of California, duly commissioned and sworn, per- "sonally appeared the within named.

"Milton S. Latham Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru- "ment, and severally acknowledged before me that they

"executed the same as such Trustees freely and voluntar-
"ily and for the uses and purposes therein set forth.

"IN WITNESS WHEREOF, I have hereunto
"set my hand and affixed my official seal, the day and
"year last above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

"WHEREAS; The lands hereinafter designated
"were heretofore Patented by the U. S. Government to
"the Oregon and California Railroad Company and em-
"braced in a certain Trust Deed of said Company to
"us dated the 15th day of April, 1870 and are part of
"the Donation land claim of Reuben Draper Donation
"Certificate No. 2611, and as such excepted from the
"Grant to said Oregon and California Railroad Com-
"pany, and Whereas; The Commisisoner of the General
"Land Office has requested said Oregon and California
"Railroad Company to cause the same to be conveyed
"to said Reuben Draper. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in
"consideration of the premises, do grant, bargain, re-
"lease, convey and quit claim unto the said Reuben
"Draper and his legal representatives the following de-
"scribed real estate to wit:

"The North West Quarter of the South East Quar-

"ter of Section Twenty-five (25), Township Sixteen "(16) South Range Six (6) West. Willamette Meri- "dian, situate in Lane County and containing Forty "00/100 acres.....to have and to hold the said premises "with all rights and appurtenances thereunto belonging "unto the said Reuben Draper and his legal representa- "tives forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me a commissioner of Deeds for the "State of Oregon, residing in San Francisco in the State "of California, duly commissioned and sworn, personally "appeared the within named.

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally know to me to be the persons "described in and who executed the same as such "Trustees freely and voluntarily and for the uses and "purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal, the day and year last above "written.

"S. O. PUTNAM, Commissioner

"of Deeds for the State of Oregon."

"WHEREAS: The lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870, and are part of "the Donation land claim of William L. Lucky Dona- "tion certificate No. 1777, and as such excepted from "the Grant to said Oregon and California Railroad "Company, and whereas; The Commissioner of the Gen- "eral Land Office has requested said Oregon and Cali- "fornia Railroad Company to cause the same to be con- "veyed to said William L. Lucky. Now therefore we

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in

"consideration of the premises, do grant, bargain, re- "lease, convey and quit claim, unto the said William L. "Lucky and his legal representatives the following de- "scribed real estate to wit:

"The west half of the North West Quarter of Lot "number Four (4) of Section Five (5), Township

"Eighteen (18) South of Range Three (3) West Wil-
"lamette Meridian, situate in Lane County, Oregon and
"containing one hundred and five 00/100 acres.....to
"have and to hold the said premises with all rights and
"appurtenances thereunto belonging unto the said Wil-
"liam L. Lucky and his legal representatives forever.

"In witness whereof, we have hereunto set out hands
"and seals this twenty-second day of June A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June,
"1876, before me, a Commissioner of Deeds for the State
"of Oregon, residing at San Francisco, in the State of
"California, duly commissioned and sworn, personally
"appeared the within named.

"Milton S. Latham, Faxon D. Atherton and Wil-
"liam Norris, personally known to me to be the persons
"described in and who executed the foregoing instru-
"ment and severally acknowledged before me that they
"executed the same as such Trustees freely and volun-
"tarily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last "above written.

"S. O. PUTNAM, Commissioner,
of Deeds for the State of Oregon."

"WHEREAS; The lands hereinafter described "were hereinbefore Patented by the U. S. Government "to the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870 and are part of "the Donation land claim of George W. Caton, Dona- "tion Certificate No. 1856, and as such excepted from "the Grant to said Oregon and California Railroad Com- "pany, and whereas; The Commissioner of the Gen- "eral Land Office has requested said Oregon and Cali- "forna Railroad Company to cause the same to be con- "veyed to said George W. Caton. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton, and

"William Norris, Trustees for and in "consideration of the premises, do grant, bargain, re- "lease, convey and quit claim unto the said George W. "Caton and his legal representatives the following de- "scribed real estate, to wit:

"The South half of the South East Quarter of Sec- "tion Twenty-nine (29) Township Fourteen (14) "South, of Range Five (5) West. Willamette Merid-

"ian, situate in Benton County, Oregon and containing "Eighty (80) 00/100 acres.....to have and to hold the "said premises with all rights and appurtenances there- "unto belonging, unto the said George W. Caton and "and his legal representatives forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of

"S. O. PUTNAM,

"G. L. MURDOCK

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this twenty-second day "of June, A. D. 1876, before me, a Commissioner of "Deeds for the State of Oregon, residing in San Fran- "cisco, in the State of California, duly commissioned and "sworn, personally appeared the within:

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru- "ment, and severally acknowledged before me that they "executed the same as such Trustees freely and volun- "tarily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal, the day and year last "above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"WHEREAS; the lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company "to us, dated the 15th day of April, 1870, and are part "of the Donation land claim of Henry H. King, Dona- "tion Certificate No. 3975, and as such excepted from "the Grant to said Oregon and California Railroad Com- "pany, and whereas; The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Henry H. King. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in "consideration of the premises do grant, bargain, re- "lease, convey and quit claim unto the said Henry K. "King, and his legal representatives, the following de- "scribed real estate, to wit:

"Lots Number One (1), Two (2) and Three (3) "of Section Five (5), Township Ten (10) South of "Range Two (2) West. Willamette Meridian, situate

"in Marion County, Oregon and containing Thirty-six "(86) and 90/100 acres.....to have and to hold the "said premises with all rights and appurtenances there- "unto belonging, unto the said Henry H. King and "his legal representatives forever.

"In witness whereof, we have hereunto set our hands "and seals this Twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of,
"G. L. MURDOCK
"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this twenty-second day "of June, A. D. 1876, before me, a Commissioner of "Deeds for the State of Oregon, residing at San Fran- "cisco, in the State of California, duly commissioned and "sworn, personally appeared the within named.

"Milton S. Latham, Faxon D. Atherton & William "Norris, personally known to me to be the persons de- "scribed in and who executed the foregoing instrument, "and severally acknowledged before me that they exe- "cuted the same as such Trustees freely and voluntarily "and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"LAND DEPARTMENT

"OREGON AND CALIFORNIA R. R. CO.

"Portland, Oregon, July 9th, 1877.

"The Hon. Commissioner of the

"General Land Office.

"Washington, D. C.

"Sir:

"Referring to your letter of June 19th I beg to state "that this company is going to furnish a quit claim deed "for the tracts described in the said letter.

"There will, however, be some delay in the execution "of the deed, owing to the protracted illness of one of "the mortgage trustees who have to execute the deed.

"Very respectfully,

"P. SCHULZE."

"'F' T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
"June 19, 1877.

"P. Schulze, Esq.,

"Land Agt. Oregon & Cal. R. R. Co.,

"Portland, Oregon.

"Sir:

"In patent No. 1 issued May 9, 1871, to the Oregon "and California Rail Road Company, the selection of "SW ¼ sec. 7-Tp. 1 S., R. 4 E., 160.20/100 acres, is "included, and is shown to be in conflict with donation "certificate No. 4200 of Gilmer Kelly, issued June 25, 1873, alleging settlement May 14, 1854.

"Also in patent No. 2 issued July 12th, 1871, the "selection of lot 5, sec. 29-Tp. 9 S., R. 3W. 58.80 acres "is included, and is shown to be in conflict with donation "certificate No 4482 of Willis Osborn, issued June 27, "1874, alleging settlement August 1st, 1854.

"In order therefore to remove the cloud of title rest- "ing upon said donation claims, I have to request your "company to furnish a full relinquishment to the United "States.

"Very respectfully,

"J. A. WILLIAMSON,
"Commissioner."

"'F'

T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
"April 27, 1877.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal. R. R. Co.,
"Portland, Oregon.

"Sir:

"In patent No. 2, issued July 12th, 1871, to the "Oregon and California Rail Road Company, the S ½ "of NW¼ of NW¼, sec. 8-Tp. 6 S., R. 1W., 19.45/100 "acres, is in conflict with the donation claim of John "W. Cleaver, certificate No. 4689, alleging settlement "25th November, 1858.

"Therefore in order to remove the cloud of title rest-"ing upon said Cleaver's entry—I have to request your "Company, to furnish a complete relinquishment of said "tract to the United States as Railroad land.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"'F' T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
April 30, 1877.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal R. R. Co.,
"Portland, Oregon.

"Sir:

"In patent no. 2, issued July 10th, 1871, to the Ore-
"gon and California Railroad Company, lots 1, 2, 3, &
"4, sec. 31-Tp. 6 S. R 5 West, 68.44/100 acres, are
"in conflict with donation claim of Green B. Savery,
"certificate No. 4445, alleging settlement 25th Novem-
"ber, 1853.

"Therefore in order to remove the cloud to title rest-
"ing upon said Savery's entry, I have to request your
"company to furnish a complete relinquishment of said
"lots to the United States.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"LAND DEPARTMENT
"OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10th, 1877.

"The Hon. Commissioner of the
"General Land Office.
"Washington, D. C.

"Sir:

"Your letters of April 27th and April 30th were mis-
"laid and therefore left unanswered, having just found
"them, I beg to state that quit claim deed to the United
"States for the tracts described in the said letters will
"be issued as soon as a mortgage trustee will have been
"appointed by the Court in place of F. D. Atherton,
"deceased.

"Very respectfully,
"P. SCHULZE,
"Land Agt. O. & C. R. R. Co."

"LAND DEPARTMENT
"OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10, 1877.

"The Hon. Commissioner of the
"General Land Office.
Washington, D. C.

"Sir:

"I have the honor to enclose herewith as quit claim "deed for lots 2 and 3 of Sec. 13 T. 3 S. R. 3 E. contain- "ing 40.21 acres to James Waldrup, the receipt of which please acknowledge.

"I am, sir,

"Very respectfully,

yours

"P. SCHULZE,

"Land Agent."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
"Sept. 5, 1877.

"P. Schulze, Esq.,

"Land Agent O. & Cal. R. R. Co.,
"Portland, Oregon.

"Sir:

"I have to acknowledge receipt of your letter of 10th "ulto, and accompany quit claim deed for Lots No. 2 "and 3 of Sec. 13, Tp. 3 S. R. 3 E., 42.21/100 acres, "made by the Oregon and California Rail Road Com- "pany, June 22d, 1876, in accordance with our letter "of March 13, 1873.

"Very respectfully,

"J. A. WILLIAMSON,

"Commissioner."

"WHEREAS; The lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and em- "braced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870 and are part "of a donation land claim of James Waldrup, Donation "Certificate No. 4325 and as such excepted from the "Grant to said Oregon and California Railroad Com- "pany, and whereas; the Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Isaac Waldrup, Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris,

"Trustees for and in consideration of the premises do "grant, bargain, release, convey and quit claim unto the "said James Waldrup and his legal representa- "tives, the following described real estate, to wit:

"Lots number Two (2), and Three (3) of Section "Thirteen (13), Township Three (3) South of Range "Three (3) East. Willamette Meridian, situate in "Clackamas County, Oregon and containing Forty two "(42) 21/100 acres—to have and to hold the said "premises with all rights and appurtenances thereunto "belonging unto the said James Waldrup and his legal "representatives forever.

"In witness whereof, we have hereunto set out hands "and seals this twenty-second day of June, 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing at San Francisco in the "State of California, duly commissioned and sworn, per- "sonally appeared before me, the within named.

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the per- "sons described in, and who executed the foregoing in- "strument, and severally acknowledged before me that "they executed the same as such Trustees freely and "voluntarily, and for the uses and purposes therein set "forth. In witness whereof, I have hereunto set my "hand and affixed my official seal, the day and year last "above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

Washington, D. C.,
"Sept. 6, 1877.

"Register & Receiver,
"Oregon City, Oregon.

"Gentlemen:

"The selection of lots 2 & 3 of sec. 13-Tp. 3 S., R. "3E.-42.21 acres, by the Oregon and California Rail- "road Company, under the Acts of July 25, 1866, and "June 25, 1868, and same patented May 9, 1871, I have "now to state were duly relinquished by said Company, "June 22d 1876, upon the showing that said selection was "in direct conflict with the donation claim of James "Waldrup, certificate No. 4325, issued Jany. 28, 1874.

"Please note on your records said relinquishment and "refer to this as letter F.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"LAND DEPARTMENT
"OREGON & CALIFORNIA R. R. CO.

"Portland, Oregon, Jan. 28th, 1878.

"The Hon. Commissioner of the
"General Land Office.
"Washington, D. C.

"Sir:

"Referring to your letters "F" dated April 27th, "April 30th and June 19th, 1877 respectively I beg to "enclose herewith our relinquishment to the following "described land, to wit:

"S. W. 4 Sec. 7 T. 1 S. R. 4 E; Lot No. 5 of Sec "29 T. 9 S. R. 3 W.; Lots 123 & 4 Sec. 31 T. 6 S. R. "5 W.; & S. 2 of N. W. 4 of N. W. 4 Sec. 3 T. 6 S. "R. 1 W.

"Please acknowledge receipt.

"Very respectfully,
"P. SCHULZE,
"Land Agt. O. & C. R. R. Co."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
February 16, 1878.

"P. Schulze, Esq.,

"Land Agt. O & Cal. R. R. Co.

"Portland, Oregon.

"Sir:

"I have to acknowledge the receipt of your letter of "28th ultimo, and accompanying relinquishment of the "Oregon and California Railroad Company, made the "19th ulto, in accordance with my letters of April 27 "and 30th and June 19, 1877, for the following described "tracts.

"SW¼ sec. 7—Tp. 1 S. R.—4 E, 160.20 acres.

"S½ of NW¼ of NW¼, sec. 3, Tp. 6, S. R. 1 W. 19.45 acres.

"Lots 1, 2, 3 & 4, sec. 31, Tp. 6, S. R. 5 W., 68.44 acres.

"Lot 5, sec. 29, Tp. 9, S. R. 3 W., 5080 acres.

"Very respectfully,

"J. A. WILLIAMSON,

"Commissioner."

"WHEREAS; The hereinafter described tracts and "parcels of Real Estate, are included in patents issued "by the United States to the Oregon and California "Railroad Company under Act of Congress of June "25th, 1866 and

"WHEREAS; the same are parts of the land con- "veyed by the said Oregon and California Railroad "Company to Milton S. Latham, Faxon D. Atherton "and William Norris, Trustees, by a certain Trust Deed, "dated the 15th day of April, 1870, and

"WHEREAS; it appears that the said tracts of "land are also embraced in certain Donation entries, and

"WHEREAS; The Commissioner of the General "Land Office of the United States has requested a re- "linquishment of the said tracts to the United States.

"Now therefore we, Milton S. Latham and William "Norris as only surviving and acting Trustees of the "Trust declared in the said Deed of Trust of the 15th "day of April, 1870. (The said Faxon D. Atherton "having died on the 18th day of July, 1877), in consid- "eration of the premises, do hereby release and forever "quitclaim, unto the United States and unto their suc- "cessors and assigns the following described parcels and "tracts of real estate, to wit:

"The S. W. ¼ of Sec. 7, Township 1 South of R. "4 E. and Lot number 5 of Section 29 in T. 9 S. R. 3 "W. and Lots number 1, 2, 3 and 4 of Section 31, T. "6 S. R. 5 W. and the South half of the N. W. ¼ of "N. W. ¼ of Section 3 in T. 6 S. R. 1 W. Willamette "Meridian.

"Together with all and singular the tenements, "hereditaments and appurtenances thereunto belonging "or in anywise appertaining—to have and to hold the "same to the said United States and to their successors "and assigns forever, with all appurtenances thereto be- "longing free from all claim thereon on the part of us, "the said Milton S. Latham and William Norris, Trus- "tees, or any one claiming the same by or through, or "under us in any way or manner whatsoever.

"In witness whereof, we have hereunto set our hands "and seals this day of 1876.

"In presence of

"R. T. POLK "MILTON S. LATHAM (Seal)

"S. O. PUTNAM. "WM. NORRIS (Seal)

"State of California,

"County of San Francisco.

"Be it remembered that on this 19th day of January, "1878, before me, a Commissioner of Deeds for the State "of Oregon, residing at San Francisco in the State of "California, duly commissioned and sworn, personally "appeared before me, the within named Milton S. "Latham and William Norris, personally known to me "to be the persons described in, and who executed "the foregoing instrument, and severally acknowledged "before me that they executed the same as such Trus- "tees freely and voluntarily, and for the uses and pur- "poses therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last above "written.

"San Francisco.

"S. O. PUTNAM,

Com'r. of Deeds for the State of Oregon."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Washington, D. C.,

"Aug. 4, 1881.

"P. Schulze, Esq.,

"Atty. Oregon and California R. R. Co.,

"Portland, Oregon.

"Sir:

"On May 29, 1872, there was patented (list No. 3) "to the Oregon and California Railroad Company the "NW¼ NW¼ of Section 33, T. 18 S., R. 4 W., Rose-"burg land district, Oregon, This tract was erroneously "included in the patent of that date, embracing other "lands.

"The records show that said tract, since February "1, 1853, has been covered by the donation claim. Noti-"fication No. 2624 of Hollen Bailey and Elizabeth "Bailey, his wife, made June 17, 1853, under act of Con-"gress approved Sept. 27, 1850. January 5, 1880, do-"nation certificate No. 2085, issued thereon.

"There can be no question that under said act of Con-"gress said Bailey and wife, can claim title to said land "as of the date of settlement, February, 1, 1858.

"The proofs show compliance with the law, and the "land absolutely vested in said claimants prior to the "act of July 25, 1866, granting lands to said railroad "company (see case of Hall vs. Russell, 11 Otto, 503).

"The railroad company are requested to reconvey "title in said land to the United states in order that when "patent shall issue on the donation claim, there may be "no cloud upon the title. Of course the company will "be entitled to select other lands in lieu thereof accord-"ing to the provisions of the second section of the act of "July 25, 1866.

"An early reply is requested.

"Respectfully,

"N. C. M'FARLAND,

"Commissioner."

"LAND DEPARTMENT,
"OREGON & CALIFORNIA R. R. CO.,

"Portland, Oregon, August 25th, 1881.

"in applying for land,
"describe it by section,
"township and range, in
"all correspondence relating
"to contracts always give
"number of contract.

P. SCHULZE,
Land Agent.

"The Hon. Commissioner of the General Land Office.
Washington, D. C.

"Sir:

"Referring to your letter "F" of 4th inst. I have "the honor to advise you that this company will comply "with your request to give a quit claim deed to the "United States for the N. W. 4 of the N. W. 4 of Sec- "tion 38, Township 18 South Range 4 West.

"There will be, however, some delay in the issuance "of such deed as it will require some time to obtain the "signatures of the mortgage trustees of this company.

"Very respectfully,
"PAUL SCHULZE,

"Land Agent of the Oregon and California R. R. Co."

"OREGON & CALIFORNIA RAILROAD COMPANY,

"R. Koehler, Receiver.

"Portland, Or. 11th June, 1887.

"The Hon.

"The Commissioner of the General Land Office,

"Washington, D. C.

"Dear Sir:

"Herewith I beg to hand you deed of this Company "to the following pieces of land patented to the Com- "pany by error as per request of your letters dated "Jany. 12, 1885, F. 1609. January 31, 1885 and letter "to Mr. Koehler dated April 25, 1877, viz.

"N . W. ¼ of N. W. ¼ Section 33 Tp. 18, S. R. "4 West.

"N. W. ¼ of S. E. ¼ and N. E. ¼ of S. W. ¼ "Section 29, Tp. 14 S. R. 1 East.

"S. E. ¼ of N. W. ¼ Section 29 Tp. 11 S R. 1 "East.

"The two first pieces included in patent dated May "29, 1872 and the last in patent dated July 12, 1871.

"Please acknowledge receipt and oblige,

"Yours truly,

"GEO. H. ANDREWS,"

"Refer in reply to this initial. F.

S. S. M., M. P. D., CMW

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Washington, D. C.,

"July 2, 1887.

"Geo. H. Andrews, Esq.,

"Portland, Oregon.

"Sir:

"As requested I hereby acknowledge the receipt of "your letter of the 11th inst., and accompanying deed "reconveying to the United States the NW¼ NW¼ "Sec. 33, Tp. 18 S., range 4 W.; the NW¼ SE¼ and "NE¼ SW¼ sec. 29, town. 14S, range 1 E., and "SE¼ NW¼, sec. 29, town 11 s., range 1 E., Ore- "gon. Said deed was executed by the Oregon and Cali- "fornia Railroad Company for the purpose of remov- "ing the cloud from the titles of Hollen Bailey and wife, "James Huntsucker, and Cyrus Lundy under donation "certificates 2085, 1958 and 5228, respectively.

"Very respectfully,

"WM. A. J. SPARKS,

"Commissioner."

"This indenture witnesseth, that whereas patents "have been erroneously issued for the hereinafter de- "scribed parcels of land, by the United States to the "Oregon and California Railroad Company, of Port- "land, Oregon, under the Act of Congress of July 25th, "1866, granting lands to said Company to aid in the "construction of its railroad and telegraph line therein "mentioned; and whereas said Railroad Company has "been requested by the Government to reconvey to it the "said parcels of land:

"Now therefore, in consideration of the premises "and of One Dollar to it paid, the receipt whereof is "hereby acknowledged, the said Oregon and California "Railroad Company doth hereby grant and convey, and "the Farmers Loan and Trust Company, a corporation "created and existing under the laws of the State of New "York, being the Trustee or Mortgagee of said lands, "so granted to said Railroad Company by said Act of "Congress, doth hereby remise and release unto the "United States, the northwest quarter of the northwest "quarter of section thirty three, in Township eighteen "South of Range four West, of the Willamette Merid- "ian, and the northwest quarter of the southeast quar- "ter, and the northeast quarter of the southwest quarter "of section twenty-nine, in Township fourteen South of "Range one East, of the Willamette Meridian, all in- "cluded in patent issued to said Railroad Company May "29th, 1872; and the southeast quarter of the northwest "quarter of section twenty nine in Township eleven

"South of Range one East, of the Willamette Meridian, "included in patent issued to said Railroad Company "July 12th, 1871; all in the State of Oregon.

"To have and to hold the said tracts or parcels of "land above described unto the United States in fee "simple forever.

"And the said Oregon and California Railroad Com- "pany doth certify unto the United States that said lands "hereby reconveyed to the Government are free from all "encumbrance done and suffered by said Railroad Com- "pany, in any way, manner or form whatsoever.

"In witness whereof the said Oregon and California "Railroad Company, and the said Farmers' Loan and "Trust Company, have caused these presents to be "sealed with their respective seals and to be executed by "their respective Presidents and Secretaries, on this 9th "day of May A. D. 1887.

"M. S. CUNNINGHAM,)
"A. D. MARSHALL)
"Witnesses to the)
"execution hereof by)
"the O. & C. R. R. Co.)

THE OREGON AND CALIFORNIA RAIL- ROAD COMPANY,

By GEO. H. ANDREWS,
"2nd Vice-President,

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. BRETHERTON,
Secretary.

"C. A. BOUTRELL.)
)
)
)
)
"Witnesses to the)
"execution hereof by the)
"F. L. & T. Co. (
"G. SEARLES.)

THE FARMER'S LOAN AND TRUST COMPANY.

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST COMPANY.

By WM. H. LEUPP,
Secretary.

"State of Oregon,)
) ss.
"County of Multnomah.)

"Be it remembered that on this 9th day of May A. "D. 1877, before me, the undersigned, a Notary Public "in and for the County of Multnomah and State of Ore- "gon, duly commissioned and qualified, personally came

"George H. Andrews, 2nd Vice-President of the Ore-
"gon and California Railroad Company, and Walter W.
"Bretherton, Secretary of said Company, whose names
"are subscribed to the foregoing instrument as 2nd Vice-
"President and Secretary of the said Company, both
"personally known to me to be the said individuals
"named and described in, and who executed the said in-
"strument, and they severally acknowledged to me that
"he, the said George H. Andrews, as 2nd Vice-Presi-
"dent, and he, the said Walter W. Bretherton, as Sec-
"retary of the said The Oregon and California Railroad
"Company, executed the foregoing instrument as and
"for the act and deed of said Corporation, for the uses
"and purposes therein mentioned; and he the said Wal-
"ter W. Bretherton, being by me duly sworn, did de-
"pose and say that he is the Secretary of the Oregon
"and California Railroad Company, and resides at Port-
"land, Multnomah County, Oregon; that he is the legal
"custodian of, and is acquainted with and has in his pos-
"session, the corporate seal of said Company; and that
"the seal affixed to the foregoing instrument is such cor-
"porate seal; that the same was so affixed by him as Sec-
"retary of the said Company on the 9th day of May,
"A. D. 1887, by order of the Board of Directors of said
"Company, and that he signed his name thereto by the
"like order of the Board of Directors of said Company.

"In witness whereof I have hereunto set my hand and
"affixed my official seal the date first above written.

"F. E. EWAN,

(Seal) Notary Public in and for the State of Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it remembered that on this first day of June, A. "D. 1877 before me, a Commissioner of the State of "Oregon in the State of New York, residing in said City "of New York, personally came Rosewell G. Rolston, "President of the Farmer's Loan and Trust Company, "the corporation described in the foregoing instrument, "and who is personally known to me; and he being by "me duly sworn, did depose and say that he is, and at the "time of the execution of said instrument was, the Presi- "dent, and that William H. Leupp is, and then was, "the Secretary of the said Company; and that he knows "the corporate seal of said Company, and that the seal "affixed to the foregoing instrument as such is said "corporate seal; that the said seal was so affixed by au- "thority of the Board of Directors of said Company; and "that he, Rosewell G. Rolston, as President aforesaid, "signed, and the said William H. Leupp, as secretary "aforesaid, attested the said instrument by like author- "ity. And the said Rosewell G. Rolston, President as "aforesaid, acknowledged the execution of said instru- "ment as the act and deed of the said The Farmers' Loan "and Trust Company, for the uses and purposes therein "expressed.

"IN WITNESS WHEREOF, I have hereunto "subscribed my name and affixed my official seal, at my

"office in the City of New York, the date and year afore-
"said.

(Seal) "G. SEARLS,

"Commissioner for the State of Oregon, in the State
"of New York.

"Pursuant to an order of the Circuit Court of the
"United States for the District of Oregon, bearing date
"February 9th, 1885, in the case of Lawrence Harrison
"et al. vs. the Oregon and California Railroad Company
"et al. of record in said Court and Cause; I do hereby
"approve the execution of the within deed as and upon
"the considerations and terms therein expressed.

"Witness my hand and seal this 8th, day of June,
"A. D. 1887.

R. KOEHLER,
Receiver."

"UNITED STATES LAND OFFICE,

"Roseburg, Oregon, Oct. 21, 1887.

"Hon. Commissioner,
"General Land Office,
"Washington, D. C.

"Dear Sir:

"Referring to your letter "F" dated July 2, 1887,
"I herewith return to you the deed therein referred to,
"the same having been recorded in all the counties in

"which the land is situated, (Linn and Lane), and be-
"ing returned to this office by the Register and Receiver
"of Oregon City Land Office.

"Very respectfully,

"A. C. JONES,

"Receiver."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C. June——, 1887.

"I, Wm. A. J. Sparks, Commissioner of the Gen-
"eral Land Office, hereby certify that the annexed copy
"of a deed executed by the Oregon and California Rail-
"road Company and the Farmer's Loan and Trust
"Company, a corporation existing under the laws of the
"State of New York, on the 9th day of May, 1887, and
"reconveying to the United States, the ¼ N. W. ¼
"Sec. 33, town. 18 S 1, range 4 W 1, and the N. W.
"S. E. ¼ and N. E. ¼ S. W. ¼ Sec. 29, town. 14 S
"range 1 E., Roseburg district; and the S. E. ¼ N. W.
"¼ section town 11 S. Range 1 E., Oregon City dis-
"trict, all in the State of Oregon, is a true and literal
"exemplification from the files of this office.

"IN WITNESS WHEREOF I have hereunto
(Seal) "subscribed my name, and caused the Seal of
"this Office to be affixed, at the City of Wash-
"ington, on the day and year above written.

"WM. A. J. SPARKS,

"Commissioner of General Land Office."

"THIS INDENTURE WITNESSETH, that "whereas patents have been erroneously issued for the "hereinafter described parcels of land by the United "States to the Oregon and California Railroad Com- "pany, of Portland, Oregon, under the Act of Congress "of July 25th, 1866, granting lands to said Company "to aid in the construction of its railroad and telegraph "line therein mentioned; and whereas said Railroad "Company has been requested by the Government to re- "convey to it the said parcels of land:

"Now therefore, in consideration of the premises and "of One Dollar to it paid, the receipt whereof is hereby "acknowledged, the said Oregon and California Rail- "road Company doth hereby grant and convey, and the "Farmer's Loan and Trust Company, a corporation "created and existing under the laws of the State of New "York, being the Trustee or Mortgage of said lands, so "granted to said Railroad Company, by said Act of Con- "gress, doth hereby remise and release unto the United "States, the northwest quarter of the northwest quarter "of section thirty-three, in township eighteen South of "Range Four West, of the Willamette Meridian, and "the northwest quarter of the southeast quarter, and the "northeast quarter of the southwest quarter of section "twenty-nine, in Township fourteen South of Range one "East, of the Willamette Meridian, all included in pat- "ent issued to said Railroad Company May 29th, 1872; "and the southeast quarter of the northwest quarter of "section in Township eleven South of Range one East "of the Willamette Meridian included in patent issued to

"said Railroad Company June 12, 1871; all in the State "of Oregon.

"To have and to hold the said tracts or parcels of "land above described unto the United States in fee "simple forever.

"And the said Oregon and California Railroad Com- "pany doth certify unto the United States that said lands "hereby reconveyed to the Government are free from all "encumbrance done or suffered by sad Railroad Com- "pany, in any way, manner or form whatsoever.

"In witness whereof the said Oregon and California "Railroad company, and the said Farmer's Loan and "Trust Company, have caused these presents to be sealed "with their respective seals and to be executed by their "respective Presidents and Secretaries, on this 9th day "of May A. D. 1887.

"M. T. CUNNINGHAM.)
"A. D. MARSHALL.)
"Witness to the)
"execution hereof
"by the O. & C.)
"R. R. Co.)
(Seal)

THE OREGON AND CALIFORNIA RAIL-ROAD COMPANY,

By GEO. H. ANDREWS,

2nd Vice-President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. BRETHERTON,
Secretary.

"H. A. BAUTELLER,
"Witnesses of the
"execution hereof by the
"F. L. & T. Co.
"G. A. SEARLS.

THE FARMER'S LOAN AND TRUST COMPANY,

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST COMPANY,

By WM. H. LEUPP,
Secretary."

"State of Oregon,
) ss.
"County of Multnomah.)

"Be it remembered that on this 9th day of May, A. "D. 1887, before me, the undersigned, a notary public "in and for the County of Multnomah, and State of "Oregon, duly commissioned and qualified, personally "came George H. Andrews, 2d Vice President of the "Oregon and California Railroad Company, and Wal- "ter W. Bretherton, Secretary of said Company, whose

"names are subscribed to the foregoing instrument as "2d Vice President and Secretary of said Company, "both personally known to me to be the said individuals "named and described in, and who executed the said "instrument, and they severally acknowledged to me that "he, the said George H. Andrews as 2nd Vice Presi- "dent, and he, the said Walter H. Bretherton, as Sec- "retary of the said Oregon and California Railroad "Company, executed the foregoing instrument as and "for the Act and deed of said Corporation, for the uses "and purposes therein mentioned, and he the said Wal- "ter H. Bretherton, being by me duly sworn, did de- "pose and say that he is the Secretary of the Oregon "and California Railroad Company, and resides at Port- "land, Multnomah County, Oregon; that he is the legal "custodian of, and is acquainted with and has in his "possession, the corporate Seal of said Company; that "the seal affixed to the foregoing instrument is such "corporate seal; that the same was so affixed by him "as Secretary of said Company on the 9th day of May "A. D. 1887, by order of the Board of Directors of said "Company, and that he signed his name thereto by the "like order of the Board of Directors of said Company.

"In witness whereof I have hereunto set my hand "and affixed my official seal the date first above writ- "ten.

(Seal) "F. G. EWAN,

"Notary Public in and for the State of Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it remembered that on this first day of June "A. D., 1887, before me, a Commissioner of the State "of Oregon in the State of New York, residing in said "City of New York, personally came Rosewell G. Rol- "ston, President of the Farmer's Loan and Trust Com- "pany, the corporation described in the foregoing in- "strument, and who is personally known to me; and he "being by me duly sworn, did depose and say that he is, "and at the time of the execution of said instrument was, "the President, and that William H. Leupp is, and then "was, the Secretary of said Company; that he knows "the corporate seal of said Company, and that the seal "affixed to the foregoing instrument as such is said cor- "porate seal; that the said seal was so affixed by au- "thority of the Board of Directors of said Company; and "that the, Rosewell G. Ralston, as President, aforesaid, "signed, and the said William H. Leupp as Secretary "aforesaid, attested the said instrument by like author- "ity.

"And the said Rosewell G. Ralston, President as "aforesaid, acknowledged the execution of said instru- "ment as the Act and deed of the said The Farmer's "Loan and Trust Company, for the uses and purposes "therein expressed.

"In witness whereof, I have hereunto subscribed my "name and affixed my official seal, at my office in the

"said City of New York, the day and year aforesaid.

(Seal) "G. A. SEARLS,

"Commissioner for the State of Oregon, in the State "of New York.

"Pursuant to an order of the Circuit Court of the "United States for the District of Oregon, bearing date "February 9th, 1885, in the case of Lawrence Harrison "et al. vs. the Oregon and California Railroad Company "et al. of record in said Court and Cause; I do hereby "approve the execution of the within deed as and upon "the consideration and terms therein expressed.

"Witness my hand and seal this 8th day of June "A. D. 1887.

"R. KOEHLER, Receiver."

"Reconveyance to the United States of the E/2 "SW/4 and NW/4 SW/4 Sec. 28, T. 20 S., R. 1. E., "Oregon.

October 19, 1905,

"The Honorable

"Commissioner of the

"General Land Office.

"Sir:

"Referring to your letter (1904-222494) to me of "February 6, 1905, I now enclose herewith Deed No. "88-B, dated Agust 1, 1905, executed by the Oregon

"& California R. R. Co., by J. P. O'Brien, Vice Presi-
"dent, and W. W. Cotton, Secretary, and by the Union
"Trust Company of New York, by A. W. Kelley, Vice
"President, and E. R. Merritt, Assistant Secretary, re-
"linquishing and reconveying the tracts named in the
"caption to the United States.

"Please acknowledge receipt of this deed.

"Very respectfully,

"D. A. CHAMBERS,

"Attorney Or. & Cal. R. R. Co."

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
November 9, 1905.

"Address only the
"Commissioner of the General
"Land Office.

"Mr. D. A. Chambers,
"Atty. for O & C. R. R. Co.,
McGille Building, Washington, D. C.

"Sir:

"I have to acknowledge the receipt of your letter of
"October 19, 1905, submitting in response to the request
"of this office of February 6, 1905, a deed executed by
"the Oregon and California Railroad Company Au-

"gust 1, 1905, reconveying to the United States the E½ "SW¼ and NW¼ SW¼, Sec. 23, T. 20 S., R. 1 E., "Oregon.

"Very respectfully,

"J. H. FIMPLE,

"Acting Commissioner."

"Deed No. 88-B

"This Indenture made on August 1st, 1905, by the "Oregon and California Railroad Company, a corpora- "tion of the State of Oregon, and the Union Trust "Company of New York, a corporation of the State of "New York, first parties, and the United States of "America, second party, Witnesseth: That

"Whereas, the patent bearing date June 14th 1904, "the United States of America, through inadvertence "and mistake, conveyed unto the said Oregon and Cali- "fornia Railroad Company the apparent legal title to "the East half of South West quarter (E½ of SW¼) "and North West quarter of South West quarter "(NW¼ of SW¼) of Section Twenty-three (23), in "Township Twenty (20) South, Range one (1) East, "Willamette Meridian, County of Lane, State of Ore- "gon: And

"Whereas, the legal title to the said lands was there- "tofore granted by Act of Congress entitled "An Act "granting lands to the State of Oregon, to aid in the

"construction of a military road from Eugene City to "the eastern boundary of said State," approved July "2nd, 1864:

"Now, therefore, in consideration of the premises, "the above-named first parties hereby relinquish and re- "convey the said lands unto the above-named second "party,

"To have and to hold unto the second party, and "assigns, forever.

"In Witness Whereof, the said first parties have "caused these presents to be sealed with their respective "seals, and executed by their respective Presidents and "Scretaries, the day and year first above written.

In Presence of)
"Hortense Whittaker)
"James G. Wilson.)

THE OREGON AND CALIFORNIA RAIL-ROAD COMPANY,

as to

J. P. O'Brien

and

W. W. Cotton.

By J. P. O'Brien,
Vice-President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. COTTON,
Secretary.

THE UNION TRUST COMPANY OF NEW YORK,

By A. W. KELLY,
Vice-President.

THE UNION TRUST COMPANY OF NEW YORK,

"J. A. Shaughnessy
"W. H. Spaulding. By E. R. MERRITT,
Asst. Secretary."

"State of Oregon,)
) ss.
"County of Multnomah.)

"Be it Remembered, That on this 15th day of Au-"gust A. D. 1905, before me, the undersigned, a Notary "Public in and for the said County of State, duly com-"missioned and qualified, personally came J. P. O'Brien, "Vice-President of the Oregon and California Railroad "Company, and W. W. Cotton, Secretary of said Com-"pany, whose names are subscribed to the foregoing in-"strument as Vice-President and Secretary of said Com-"pany, both personally known to me to be the said in-

"dividuals named and described in, and who executed "the said instrument, and they severally acknowledged "to me that he, the said

"J. P. O'Brien, as Vice-President and he, the said

"W. W. Cotton, as Secretary of the said "The Oregon and California Railroad Company, ex- "ecuted the foregoing instrument as and for the act and "deed of said Corporation, for the uses and purposes "therein mentioned; and he, the said

"W. W. Cotton, being by me duly sworn, did depose "and say that he is the Secretary of the Oregon and Cali- "fornia Railroad Company, and resides at Portland, "Multnomah County, Oregon; that he is the legal cus- "todian of, and is acquainted with, and has in his pos- "session, the corporate seal of said Company; that the "seal affixed to the foregoing instrument as the seal of "said Company is such corporate seal; and that the same "was so affixed by him as Secretary of said Company "on the 15th day of August A. D. 1905, by order of the "Board of Directors of said Company, and that he "signed his name thereto by the like order of the Board "of Directors of said Company.

"In Witness Whereof, I have hereunto set my hand "and affixed my official seal the day and year in this "certificate first above written.

"JAMES G. WILSON,

"Notary Public for Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it Remembered, that on this 21st day of Sep-"termer A. D. one thousand nine hundred and five, be-"fore me, a Commissioner of the State of Oregon in the "State of New York, residing in said City of New York, "personally came A. W. Kelley, Vice-President of the "Union Trust Company of New York, the corporation "described in the foregoing instrument as one of the "first parties thereto, and who is personally known to "me; and he, being by me duly sworn, did depose and "say that he is, and at the time of the execution of said "instrument was, the Vice-President, and that E. R. "Merritt is, and then was, the Assistant Secretary of "said Company; that he knows the corporate seal of "said Company and that the seal affixed to the fore-"going instrument as such is said corporate seal; that "the said seal was affixed by authority of the Board of "Directors of said Company; and that he, A. W. Kel-"ley, as Vice-President aforesaid, signed, and the said "E. R. Merritt, as Assistant Secretary aforesaid at-"tested the said instrument by like authority; and that "the said A. W. Kelley, Vice-President as aforesaid, "acknowledged the execution of said instrument as the "act and deed of said The Union Trust Company of "New York for the purposes therein expressed.

"In Witness Whereof, I have hereunto subscribed "my name and affixed my official seal, at my office in

"the said City of New York, the day and year in this "certificate first above written.

"PETER PALMER,

"Commissioner for the State of Oregon, in the State "of New York."

DEFENDANTS' EXHIBIT 376

consists of certified copies: letter, July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent; May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary expressing opinion as to validity of assignment by the Oregon Central Railroad Company to the Oregon & California Railroad Company, and that patents should be issued to the O. & C. R. R. Co.; May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler; July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal; April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.; May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

Copy of this exhibit is as follows:

DEPARTMENT OF THE INTERIOR,

"UNITED STATES OF AMERICA.

Washington, D. C. March 16, 1912.

"PURSUANT to Section 882 of the Revised Stat-"utes, I hereby certify that the annexed papers are true "copies of the originals as they appear on the records and "files of the Department.

"IN TESTIMONY WHEREOF, I have here-"unto subscribed my name and caused the seal of the "Department of the Interior to be affixed, the day and "year first above written.

(Seal) CANNIE A. THOMPSON,
"Assistant Secretary of the Interior."

"DEPARTMENT OF THE INTERIOR.

"Washington, D. C., July 17, 1868.

"Sir:

"I have received your letter of the 16th instant and "accompanying paper, purporting to be an acceptance "by the Oregon Central Railroad Company of the grant "made by the Act of July 25, 1866.

"By law the Company was required to file an 'as-"sent' to its terms and conditions, within one year. That "time expired July 25, 1867, and this paper, if suffi-"cient for that purpose, could not now be received.

"I state for your information that J. Gaston, Presi-

"dent of the Oregon Central Railroad Company, with-
"in the time prescribed in that act filed an assent which
"was received.

"In compliance with your request I inclose a copy
"of my letter of the 8th instant to Mr. Gaston in regard
"to maps to be filed in this Department.

"Very respectfully,

"Your obt. servant,

"O. H. BROWNING,

"Secretary."

"A. M. Loryea, Esq.,
"Present."

OFFICE OF ASSISTANT ATTORNEY-GENERAL.

"Washington, May 5th, 1871.

"Sir:

"I have considered the subject matter of the letter
"of W. E. Chandler, Esq. dated May 3d, 1871, upon
"which you desire my opinion.

"This letter relates to the validity of an assignment
"made by the Oregon Central Railroad Company to the
"Oregon and California Railroad Company, and re-
"quests that the question be referred to the Hon. Attor-
"ney-General for his opinion and that in the mean time
"the issuing of any patents to the said Oregon and Cali-
"fornia Railroad be suspended.

"To understand the matter properly it will be nec-
"essary to refer to the provisions of the Act of Con-
"gress granting lands in controversy, and to the action
"already had in your Department.

"Congress July 25, 1866, passed 'an Act granting
"lands to aid in the construction of a Railroad and Tele-
"graph line from the Central Pacific Railroad in Cali-
"fornia, to Portland in Oregon.'

"By the 1st section it is provided that the California
"& Oregon Railroad Company, organized under an act
"of the State of California and 'such Company organ-
"ized under the laws of Oregon as the Legislature of
"said State shall hereafter designate' should be em-
"powered to build a railroad and telegraph line be-
"tween the City of Portland in Oregon and the Central
"Pacific Railroad in California, each of said roads to
"construct that portion of the railroad and telegraph
"lying within the limits of their respective States.

"The second section 'granting to the said companies
"their *successors* and *assigns*, for the purpose of aiding
"in the construction of said railroad and telegraph line
". . . every alternate section of public land, not min-
"eral designated by odd numbers, to the amount of
"twenty alternate sections on each side per mile' of said
"road, with the usual reservations.

"Section 4, provided that whenever 'said Companies
"or either of them' should have completed twenty or
"more consecutive miles; commissioners should be ap-

"pointed by the President to examine and report to him "and if it were found the road and telegraph had been "completed and equipped in all respects as required by "said act, it directed that 'thereupon patents shall issue "to said Companies or either of them, as the case may be, "for the lands hereinafter granted to the extent of and "coterminous with the completed section of said rail-"road and telegraph line.

"Section 5, declared that the grants were 'made upon "the condition that the said Companies shall keep said "Railroad and Telegraph line in repair and use and "shall at all time transport the mails upon said railroad "and transmit dispatches by said telegraph line for the "Government of the United States, when required so "to do by any departments thereof, and that the Gov-"ernment shall at all times have the preference in the "use of said railroad and telegraph therefore at fair and "reasonable rates.

"Other Sections provided that 'said Companies' "should file their assent to the Act in the Department "of the Interior within one year, and should complete "one Section of twenty miles within two years, and "should use the said railroad and telegraph as one con-"tinuous line.

"Section nine provided that 'whenever the word 'Company or Companies' is used in this Act it shall be "construed to embrace the words their associates, suc-"cessors, and *assigns, the same as if the words had been "inserted or thereto annexed.*'

"That is to say, in construing this act, whenever the "word 'company or companies' is used, it is to be read "and construed just as it would be if the words 'as- "sociates, successors and assigns' immediately followed "said words.

"The Legislature of Oregon designated The Oregon "Central Railroad as the one authorized to construct "the Portland road.

"The Oregon Central constructed the first section "of twenty miles of its road and the President on the "29th day of January 1870, ordered the patents for that "portion to be issued.

"On the 28th of April 1870, the Secretary of the "Oregon Central, filed in the Department of the In- "terior, an assignment by that Company of all its rights "and interests to the Oregon and California Railroad "Company, and thereupon Secretary Cox recognized "the said last named Company as the one entitled to the "grant given to its assignor, and gave a certificate to "that effect upon the faith of which the road has been "able to negotiate a large amount of its bonds, secured "by a mortgage upon the lands assigned.

"The Oregon and California Company have com- "pleted three additional sections, each twenty miles, of "the road leading from the City of Portland to the Cen- "tral Pacific in California. Commissioners have re- "ported favorably thereon and the President has di- "rected the patents to issue, and the question now is, "shall the patents issue or be delayed by reason of any-

"thing alleged in the communication of Mr. Chandler.

"He argues 1st that the Congressional land grant "was a personal trust vested in this Oregon Central "Railroad Company for the public purpose of aiding in "the construction of an important railroad line and could "not legally be sold or transferred to another railroad "company without the consent of Congress.

"I agree with him in the opinions that this grant "could not be assigned to another company without the "consent of Congress, but I disagree with him upon the "question whether the consent of Congress has not al- "ready been given as I construe the Act of July 25th, "1866, Congress has given such consent. Throughout "the entire act it has shown an intent to deal with the "assignee of the Oregon Central as well as with that "road itself.

"Bearing in mind that the word 'company' signifies "by express Statutory definition 'assigns' as well as com- "pany, and this act reads there is granted to said com- "pany and *its assigns*—whenever said company and *its "assigns* have completed twenty miles—patents shall is- "sue to said company and its assigns,—this grant is upon "condition that said companies and *their assigns* shall "keep said railroad and telegraph in repair—said com- "panies and *their assigns* shall file their assent in the De- "partment of the Interior within one year and complete "one section of twenty miles within two years.

"If Congress did not intend to deal with assigns, "why was it so particular to engraft this word assigns

"into this Act in so many different places, and in fact "in every place where the company is referred to? It "is a very familiar rule in the interpretation of Statutes "that effect shall be given to every word employed un- "less it is plainly against the spirit of the act.

"In my opinion no effect can be given to the word " '*assigns*' as thus used unless it implies that there may be "a lawful assignee.

"There is no danger of loss to the Government from "such a construction. The lands cannot be claimed until "the road has been actually built. As fast as every sec- "tion of twenty miles is built, some corporation is en- "titled to the lands, what difference does it make to the "United States what Company that is? If it be said "that special confidence may be reposed in one set of "men representing a railroad corporation; then I an- "swer that such confidence may be defeated on the very "next day by a lawful and perfectly legitimate transfer "of Stock to an entirely different set of men, and the "Government cannot present it. Is there any more "danger to be apprehended from a change of roads than "there is from an entire change of the persons who own "and control them?

"A question identical in substance with the one now "under consideration, was decided by Attorney General "Stanberry as early as July 25th, 1866.

"The 15th Section of the Pacific Railroad Act of "1862 (12th Stat. 496) provided that 'whenever the "word company is used in this Act, it shall be construed

"to embrace the words their associates, successors and "*assigns,* the same as if the words had been properly "added thereto.'

"The Hannibal and St. Joseph Railroad (one of the "companies named in said act), made an assignment of "its land grant and rights to the Atchison and Pike' "Peak Railroad, and the last named road, by virtue of "the assignment asked that the U. S. Bonds should be "issued to it. The Attorney General decided that the "assignment was valid and that the bonds should be is-"sued to the Assignee, which was done.

"2d. Mr. Chandler argues that there is no essential "difference between the assignment of the Oregon and "California Railroad and the one to the Willamette Val-"ley Railroad, which latter Attorney General Akerman "in his opinion of February 20th, 1871, held to be in-"valid.

"I think there is a great difference. In that act the "words 'successors and assigns' were only once used and "that in the first section (See Act of May 4th, 1870) "which contained the grant of right of way and lands. "In all the subsequence sections which provided what "the company should do, and what liabilities it should "incur the word 'assigns' was not used—I can well un-"derstand why it was that the words were construed "simply as words of limitation.

"There was nothing else in the Act that indicated "that Congress was dealing with or intended to deal "with any other company than the one named in the "Act.

"But it is not so in this case as I have already at-
"tempted to show.

"In the assignment in that case, there was no as-
"sumption by the assignee of the liabilities of the as-
"signor. In this there is.

"3d. Mr. Chandler claims that the Secretary of the
"Interior has no power to render a void assignment valid
"by recognizing it and issuing patents under it.

"In this I agree with him fully and I have referred
"to such recognition simply as an authority, showing
"how the learned and accomplished lawyers, who have
"officially acted upon this matter have considered it.

"The only remaining subject of Mr. Chandler's
"communication relates to a suit in equity in the Su-
"preme Court of the District of Columbia wherein
"James P. Flint and others are complainants and Ben
"Holladay and the Oregon and California Railroad
"Company are respondents. The complainants allege
"that they are the owners of a large amount of stock in
"the Oregon Central Railroad Companuy—that said
"company has already built a considerable portion of the
"road and telegraph from Portland to the Southern
"boundary of Oregon and by reason thereof is entitled
"to patents from the United States for a large amount of
"land—that the respondent Holloday has entered into
"a combination to defraud the complainants and for
"that purpose has organized the Oregon and California
"Railroad Company and procured the assignment to it
"from the Oregon Central of all its right property and

"franchises and has caused a mortgage to be executed "by the Oregon and California Company upon the lands "so assigned to secure the payment of bonds which he "has negotiated and the proceeds of which he holds— "that this was in fraud of complainants rights.

"The prayer of the bill is that the organization of "the Oregon and California Company and the said trans- "fer to it may be declared to be null and void—that said "last named Company may be declared to hold said "property, so assigned, in trust for the benefit of com- "plainants—that an account may be taken and the "amount due to complainants ordered to be paid to "them—that a receiver may be appointed to take pos- "session of the property and that, *pendente lite,* the re- "spondents may be enjoined from receiving any patents "from said lands.

"This bill was filed May 2d, 1871, and on that day "one of the Judges of the Supreme Court of the District "granted an injunction upon condition that complain- "ants should give bonds in the sum of ten thousand dol- "lars. It does not appear that any bond has been given. "It does appear from the statements of Mr. Chandler's "communication that no service has been made or is like- "ly to be made upon either of the respondents. The "Oregon and California Railroad Company is a cor- "poration created by the laws of Oregon, and I do not "well see how the Supreme Court in this District is to "get jurisdiction over it.

"But suppose it should, is it the duty of a public of-

"ficer, to delay the execution of any official duty, until "one of the contending parties can be heard in the civil "courts? If so how long must he wait? Shall it be until "the case is heard in the court of original jurisdiction or "in that of last record? I think neither. In my opinion "the adoption of such a rule would be against public "policy, and would greatly impede the due prosecution "of public business.

"I advise the rejection of the request to delay. I am "decidedly of opinion that the patents should be issued "to the Oregon and California Railroad Company.

"If I were in doubt, upon this point I shall still ad- "vise as I have done, in view of the former action of "your Department sanctioned by Secretary Cox and "Attorney General Stanberry and in view of the large "pecuniary interest, that have arisen upon the faith of "that action.

"Very respectfully,

"WALTER H. SMITH,

"Asst. Atty. General.

"HON. C. DELANO,

Secretary of the Interior."

"DEPARTMENT OF THE INTERIOR.

Washington, D. C.,

May 8th, 1871.

"Dear Sir:

"After your opinion was given against the validity "of the assignment or transfer of the Oregon Central "Railroad Company of Oregon to the Willamette Val- "ley Railroad of the same State, I conferred with you in "regard to the case of the Oregon and California Rail- "road, which latter Co. claimed a land grant as assignee "of the Oregon Central Railroad.

"We then considered pretty fully the *difference* in "the acts of Congress granting lands in each three cases, "and referred particularly to the fact that, in the last "case, the right to assign is expressly or impliedly rec- "ognized throughout the entire act, and to the additional "fact that my immediate predecessor, Secretary Cox, "had received and accepted the assignment as valid, had "given a certificate under the official seal to that effect, "which certificate had been used to negotiate a large "amount (several millions) of bonds secured by mort- "gage on the road; and also this this company had com- "pleted about sixty miles of road since the assignment, "twenty miles having been previously completed.

"Under these circumstances it seemed clear to each "of us, if I remember correctly, that the assignment in "this case should be sustained, especially as Secretary "Cox had so held, and as by such action on his part, large

"investments had been made by the public in the bonds "of the Oregon and California Company, secured by "mortgage on its road and lands.

"I accordingly announced my decision to the parties "interested, and therein acerptrf certain sections of the "road which had been completed since the recognition, "by Secretary Cox, of the assignment.

"After this decision, the attorneys opposed to the as- "signment, W. E. Chandler and Hon. B. F. Butler de- "sired me to review the question, and in the meantime "to withhold the issuing of patents to the road. I did "so, and submitted the case, for advice, to Hon. W. H. "Smith, Asst. Atty. General.

"He concurred fully in the previous action of the "Department, and afterwards furnished me with his "opinion in writing.

"However, before announcing to the Counsel a sec- "ond decision, I again referred to the subject with you "while at Cabinet meeting. I informed you that the "parties desired me to refer the question to you, and "knowing the pressure upon your time, I desired to "know whether you deemed it advisable to have this case "formally referred for your consideration.

"I understood you to advise against it, and also ad- "vise that I follow the rulings of the Department made "by Secretary Cox. This being in accord with my own "deliberate judgment, I acted accordingly, and so in- "formed Counsel for the parties.

"The result has been that W. E. Chandler has sent "to the President an extraordinary letter, complaining, "among other things that I did not consult you on the "subject, and that I have overruled your opinion in a "like case.

"I have concluded, therefore, to ask you to read Mr. "Chandler's letter, herewith inclosed, and to give me "briefly (to be laid before the President) your recol- "lection in regard to the matters herein referred to. I "also submit the opinion of the Assistant Atty. General, "Mr. Smith, upon the legal questions involved in the "whole case, which opinion I wish you to examine, and "upon which I wish your opinion, that I may also sub- "mit it to the President.

"I regret to ask this favor, because I know the bur- "den you official duties impose.

"Very respectfully,

"Your Ob't. Servant,

"C. DELANO,

"Secretary.

"HON. A. T. AKERMAN,

"Attorney General,

"Washington, D. C."

"Washington, July 16th, 1869.

"Hon. O. H. Browning,

"Sec'y. of the Interior.

"Sir:

"I desire to notify you that the Oregon Central Rail-"road of which J. Gaston represents himself as Presi-"dent, is an illegal organization. The organization of "the same name of which I. R. Moores is President and "myself Vice President was made in conformity to the "laws of the State of Oregon. In connection herewith "I desire to call your attention to the enclosed paper and "ask that it may be filed as an acceptance of the lands "granted by Congress for such purpose.

"Very respectfully,

"Your Obedient Serv't,

"A. M. LORYEA,"

"Office of the

"OREGON CENTRAL RAILROAD

COMPANY,

"Salem, April 30, 1868.

"This is to certify that at a regular meeting of the "Board of Directors of the Oregon Central Railroad "Company, held at the office of the Company, Salem, "April 29th A. D. 1868, the following was passed as

"the unanimous action of said Board of Directors
" 'Resolved,

"That the Oregon Central Railroad Company "hereby accepts any grant of land which may have been "made, or may be extended to said Company, and our "Agent, A. M. Loryea, is hereby fully empowered to "present a duly certified copy of this Resolution to the "proper authorities as provided by law to be filed."

"Witness my hanr and the seal of said corpor-
(Seal) "ation this the day and year above written.

S. A. Clarke,

"Secretary O. C. R. R. Co."

"DEPARTMENT OF JUSTICE,

"Washington, May 9, 1871.

"Hon. Columbus Delano,

"Secretary of the Interior.

"Sir:

"In answer to your letter of the 8th inst, I have the "honor to state, that my recollection of what passed at "the informal conference between us, in regard to the "case of the Oregon and California Railroad, entirely "agrees with your own. I did not, it is true, examine "the case with the care and deliberation which I should "have exercised if an opinion had been formally called "for. But my impressions were, and still are (subject,

"of course, to be reversed, if they appear incorrect after "deliberate consideration), that the case of the Oregon "and California Railroad has been properly adjudicated "by Mr. Cox, your predecessor, and that a reversal of "his decision by you should not be made, unless you "should be most clearly satisfied that he was in error, "inasmuch as the embarrassment growing out of con- "trary decisions under such circumstances, would be "most serious.

"The opinion of Mr. Smith, Assistant Attorney Gen- "eral, appears to me, from cursory examination, to be a "correct exposition of the law of the case.

"My opinion against the validity of the transfer of "the rights of the Oregon Central Railroad Company "to the Willamette Valley Company, dated February "20, 1871, had relation exclusively to a case where the "act of Congress signified no intention of dealing with "any company but the one named in the act as grantee.

"The letter of the counsel for certain parties in in- "terest, Mr. Chandler, to the President, complaining of "your refusal to require the opinion of the Attorney "General in the case of the Oregon and California Rail- "road, seems to me to have been written under the "erroneous conception of the relations between the At- "torney General and the heads of other Departments. "I think that the Attorney General should be called on "for an opinion only when the head of the Department, "in which the question arises, sees a good reason for the "call, and not whenever a litigant before a Department

"desires the opinion.

"Very respectfully,

Your ob't. serv't,

"A. T. Akerman, Attorney General."

DEFENDANTS' EXHIBIT 377

consists of Senate Judiciary Committee Report No. 906. January 2, 1883: To accompany bill S. 2301, providing for the forfeiture of railroad grants in certain cases. This exhibit is as follows:

"47th Congress, SENATE. Report

"2d Session. No. 906.

"IN THE SENATE OF THE UNITED STATES.

January 2, 1883.—Ordered to be printed.

MR. GARLAND, from the Committee on the Judiciary, submitted the following

"REPORT:

"(To accompany bill S. 2301.)

"The Committee on the Judiciary have for some time "had under consideration various memorials asking for 'the forfeiture of certain railroad land grants, with sev- "eral bills and resolutions on the same subject. The "resolutions and bills differ as to the way and manner "of securing forfeitures; some asking for a direct decla-

"ration by Congress; some seeking to invest the Sec-
"retary of the Interior with the power to make such dec-
"larations.

"Upon full consideration of all these propositions,
"in connection with the various grants to be reached in
"this way, the committee found great difficulty in de-
"vising any one plan that would be effectual. The
"grants themselves are different and do not by any
"means, in all cases, carry the same meaning as to the rel-
"ative right and duties of the companies and the gov-
"ernment.

"The committee is unwilling to confide this vast
"power of declaring forfeitures to any one officer of the
"government. In its essential elements it is a judicial
"proceeding; and while it is within the power of Con-
"gress in certain cases to make this declaration, it is
"deemed best for the security and protection of all con-
"cerned that some means of a judicial character should
"be devised to accomplish this end.

"In Farnsworth vs. Minnesota and Pacific Rail-
"road Company, 92 U. S. Reps. (2 Otto), 66, the Su-
"preme Court say:

> A forfeiture by the state of an interest in lands and connected franchises, granted for the construction of a public work, may be declared for non-compliance with the conditions annexed to their grant, or to their possession, when the forfeiture is provided by statute, without judicial proceedings to as-

certain and determine the failure of the grantee to perform the conditions.

"This decision was preceded by the cases of Schulen-"berg vs. Harriman, 21 Wall., 44, and United States "vs. Repentinny, 5 Wall., 211, to the same effect. These "conditions, of course, are limited, and that carefully, "to the language of the grants discussed, which provide "clearly for the exercise of such power, and do not, as "they could not, embrace cases in which the grants were "upon different conditions. Without undertaking to "decide whether in all grants of land by the United "States to railroads Congress can declare this forfeiture, "the committee considered it best to adopt some meas-"ure that would avoid this question, and place the par-"ties in attitude towards each other that would insure "to each fair dealing and justice as far as can be done.

"They propose to direct the Attorney-General to "institute proper judicial proceedings against any rail-"road companies that he may have reason to believe are "in default as to the conditions of their grants, to bring "about a forfeiture, and secure the rights of the govern-"ment to the lands. This information, in the nature of "an information, will bring the supposed defaulting "company into court, to be heard in defense against a "forfeiture; and the court can enter such judgment or "decree as in its opinion will secure to the government "not merely in declaring a forfeiture, if need be, but in "declaring resumption of the lands granted. Appeal to "be allowed as in other cases in the courts.

"This proceeding, however, is not to interfere in any "manner with any right of the executive under his au- "thority to enforce and execute the laws to take posses- "sion and dispose of any such lands, without these pro- "ceedings where he could have done so if no act as con- "templated by the committee had passed.

"While the committee had no doubt at all that some "steps should be taken to declare forfeitures in many "of these cases, yet they were of opinion that in all "cases where reasonable and proper diligence and exer- "tions had been used by any of these companies, they "should have the benefit of the same in any proceedings "against them; and accordingly the committee were of "opinion it would be just to allow the companies to "show in defense that for one year previous to the pas- "sage of the act any substantial progress in good faith "in the building of the roads, limiting this period to "the first day of December, 1882. The substantial "progress is to be considered and passed upon by the "Attorney-General first before instituting proceedings, "and then, if pleaded in defense of the proceedings in- "stituted, the court is to pass upon it. Of course it is "a difficult matter to determine what is substantial prog- "ress, and no general rule touching it can be laid down. "Therefore, the Committee would leave it general in "this way, to be determined upon in each particular case. "Some provision of this kind is necessary, as certainly "the grants were made with a view of securing the build- "ing and completion of the roads; and when efforts "looking earnestly to that end are being made, the gov-

"ernment would not desire forfeitures to the grants. "And this is in no sense a waiver by the government of "any condition or requirement imposed upon any cor- "poration; and when this progress is not shown to exist, "it is made the imperative duty of the Attorney-Gen- "eral to proceed against the companies.

"It is believed by the committee such a law will en- "able the government to get rid of all these grants of "lands to railroads that are not being used for legiti- "mate purposes, or are misused, or in which no efforts "are being made to build the proposed roads, and at the "same time to have carried out all these grants in which "the companies in good faith are trying to finish their "roads. In other words, while such a law would be pro- "tective of the rights of the government it would not "be oppressive to corporations that are working and "dealing fairly with the liberality of the government "in trying to secure the objects of those grants.

"And to this end they have agreed on the bill here- "with proposed, and recommend its passage.

"A BILL providing for the forfeiture of railroad grants in certain cases.

"Be it enacted by the Senate and House of Repre- "sentatives of the United States of America in Con- "gress assembled, That in all cases where grants of lands "of Congress have been made to aid in internal im- "provements, and said lands have not been patented by

"the United States to the grantee, where the grantee was "a corporation, or where the lands were granted to the "State, and said lands have been disposed of by the "State, and said grants have become subject to for- "feiture or resumption by the United States for any "cause whatever, it shall be the duty of the Attorney- "General to cause suit or suits to be brought in the name "of the United States in the proper courts having juris- "diction, to obtain judgments declaring the forfeiture or "right of resumption by the United States of such lands, "as the case may be, which suit or suits shall be subject to "trial or hearing like other suits, with right or writ of "error or appeal by either party, as in other cases. This "section shall not be construed so as to prevent the exec- "utive authority of the United States from taking pos- "session and disposing of any such lands without judicial "proceedings in any case in which it could lawfully do "so in this act had not been passed.

"Sec. 2. That the provisions of the first section of "this act shall not apply to the case of any railroad (ex- "cept as mentioned in section three of this act) in which, "within one year preceding the passage of this act, any "substantial progress in building the same has been ac- "complished in good faith, and shall be continued in "the manner hereinafter mentioned, or in which, before "the rst day of December, eighteen hundred and eighty- "two, there shall have been made any substantial prog- "ress in the building thereof, and which progress shall "be continued in good faith, as hereinafter mentioned. "The foregoing provisions of this section, limiting the

"application of section one of this act, shall cease, de-
"termine, and be of no effect in the case of every rail-
"road affected thereby the building of which shall not
"be in good faith or continued after said first day of
"December, eighteen hundred and eighty-two, to the
"number of miles in each year required by the act or acts
"granting such lands, or act or acts amendatory thereof,
"and in the manner so required, until such railroad shall
"be entirely completed.

"Sec. 3. That nothing in this act shall be construed
"to be a waiver of any condition or requirement imposed
"upon any corporation or in respect of any such grant
"by the act or acts granting lands to or in aid of it or
"amendatory thereof.

"Sec. 4. That in every case in which any corpora-
"tion, or its lawful successor, being lawfully entitled so
"to do, shall not do the acts mentioned in section two
"of this act, it shall be the imperative duty of the Attor-
"ney-General of the United States to proceed against it
"as provided in section one of this act."

DEFENDANTS' EXHIBIT 378

consists of certified copies: letters April 20, 1871, Jos. S. Wilson, President E. & O. Land Co. to Commissioner G. L. O.; April 20, 1871, I. R. Moores to Jos. S. Wilson; May 9, 1871, W. W. Curtis, Acting Commissioner, to Jos. S. Wilson; in regard to patent lands inuring to the railroad company; correspondence between Jos.

S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant. This exhibit is as follows:

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE
"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of letters "dated April 20th and May 9th, 1871, respectively, "_____ are true and literal exemplifications and "press-copy of letters in this office.

"IN TESTIMONY WHEREOF I have hereunto (Seal) "subscribed my name and caused the "seal of this office to be affixed, at the "city of Washington, on the day and year "above written.

"H. W. Sawyer,
"Recorder of the General
"Land Office.

"San Francisco, California,
"No 820 California Street,
"April 20d, 1871.

"The Honorable Commissioner of the

"General Land Office, Washington, D. C.

"Sir:

"Herewith is enclosed copy of a letter of this date "from I. R. Moores, Esq., Land Agent of the Oregon "and California Rail Road Company referring to Lists "No. 1 and 2 on file in the Department embracing "33,308 97/100 acres, selected as enuring to the Oregon "and California Railroad Company under Act of the "25th July, 1866, Vol. 14, page 237, and earnestly ask- "ing for the early issue of the patents, the selection fall- "ing within the portion of the Rail Road and telegraph "line which has been completed according to the require- "ments of the 4th section of the said Act.

"The Lists were sent to the General Land Office "nearly nine months ago, and as no step can be taken "to make the lands available until the Patents are issued "it is respectfully requested they may be forwarded as "speedily as practicable.

"Respectfully,

"Jos. S. Wilson,

"P. E. & O. Ld. Co."

"Copy. Office of the Land Department

"O & C. R. R. Co., Salem, April 20th, '71.

"Hon. Jos. S. Wilson,

"Prest. E & O. Land Co.,

"Dear Sir:

"I wish to call your attention to a very great embar-"rassment we are laboring under, in the transaction of "our business, in not receiving "Patent for the lands, "and we are prohibited from selling until title passes "to the Company by U. S. Patent.

"July 28, 1870 as agent ofthe Company I made se-"lections of lands enuring to the Company for the first "completed section of twenty miles of Road, said lands "being embraced in Lists Nos, 1 & 2 of selections in "place, amounting in area to 33,308 97/100 acres. "Those Lists were promptly sent to the General Land "Office, but as yet no Patent has been received and in "consequence the Company cannot sell the lands, al-"though in daily request. The tide of immigration now "setting into our State causes a great inquiry for land "and for the development of the county and the early "settlement of the immigrants arriving it is a matter "of great and urgent importance that the Company "should receive the Patent at the earliest possible mo-"ment, it will be seen by reference to Sec. 4 Act of July "25, 1866, That when any completed section of twenty "miles of Road should be reported upon and accepted "by the President, The Company should be entitled at

"once to Patent, the lands above referred to being within "the completed section are clearly within the class for "which Patent should issue without delay. In the hope "that this embarrassment may be soon removed by the "receipt of the Patent,

"I remain,

"Very respectfully,

"(Signed) I. R. Moores."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C.,

"May 9th, 1871.

"Hon. Jos. S. Wilson,

"Presd't. E. & O. Ld. Co.,

"320 California Street,

"San Francisco, Califa.

"Sir:

"Pursuant to your letter of the 20th ulto. I have the "honor to state, that we have this day transmitted to "I. R. Moores, Esq., Land Agent of the Oregon and "California Rail Road Company at Salem, Oregon— "Patent No. 1 as recorded Vol. 2, pages 187 and 148 in- "clusive, of lands inuring to said Company under the

"Act of Congress of July 25, 1866, embracing in the "aggregate, acres *32,517.21 100.*

"Very respectfully,

"Your Obdt. Servt.

W. W. Curtis,

"Actg. Commissioner"

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington.

April 11, 1912.

"I hereby certify that the annexed copies of papers "and letters, are true and literal exemplifications of the "original papers and letters, and press-copies of letters "in this office.

IN TESTIMONY WHEREOF I have hereunto (Seal) "subscribed my name and caused the "seal of this office to be affixed, at the "city of Washington, on the day and "year above written.

"H. W. Sawyer,

"Recorder of the General Land Office."

"San Francisco, California,
"March 25th,1871.

"The Honorable Commissioner of the
"General Land Office,
"Washington City, D. C.

"Dear Sir:

"On the 21st instant I wrote to elicit data essential "at this place in order properly to make effective the "grant to the Oregon portion of the Rail Road Con- "cession by Act of 25th July, 1866, Vol. 14 p 239. In "connection with the matter, I find it necessary further "to trouble you, the present request being restricted to "that portion of the Rail Road Grant by Act of 25th "July, 1866, which extends from Portland in the North- "ern part of Oregon to the Southern boundary of that "State.

"(1st) The 2d section of said Act of 23d July, 1866 "orders that as soon as the Company files a map of the "survey of said Railroad, or any portion not less than "sixty continuous miles from either terminus, the Sec- "retary shall withdraw from sale the railroad lands on "each side.

"I request a sketch map showing the first sixty con- "tinuous mile line according to the map of the survey, "which may have been filed, giving date of filing with "copy of the order of withdrawal and dispatched to the "District Land Officers, and showing any additional "miles of which a map may have been filed—It would

"also oblige me if the Commissioner will let me know "from time to time when such map of sixty continuous "miles is filed, with dates of orders of withdrawal ac- "knowledgement of receipt of such orders.

"(2d) The 4th section of said Act of 25th July, "1866 orders that when the Company completes and "equips for service twenty miles of the road, three com- "missioners are to be appointed by the President, and "upon report, under oath, as to the facts, patents to "issue.

"It would be gratifying to me to know from time to "time when such commissioners make report and result "as to issue of patents.

"3d. The 6th section of said Act of 25th July, 1866 "is so amended by the Act of April 10th, 1869—Stat- "utes 1869—Chap. 47, that the Company may file its "assent within one year from 10th of April, 1869, viz: "until 10th April, 1870.

"I respectfully inquire the date at which the requisite "assent was filed.

"4. The Oregon portion of the railroad grant, viz, "from Portland to the Southern boundary of that State "traverses the Willamette, Umpqua and Rogue River "Valleys.

"I request an estimate of the quantity of land fall- "ing 'in place' to the said railroad grant in the Willam- "ette Valley specially, and like information as to the "other two valleys if convenient. I would also be glad

"to know the probably quantity that may be taken as "'Indemnity' in the Willamette.

"I acknowledge with thanks your telegraphic reply "of the 23d March, recognizing the right to make up 'the 'deficiency in given twenty miles' from overplus of "the next continuous miles. Does not the principle al- "low, in other words, the right of making selections "along the whole length of the road from one twenty "miles to another, and so on for the entire length of the "road, in order to make up the full quantity enuring "under the law of Congress?

"An early reply will oblige, truly yours

"Jos. S. Wilson.

"Please address care of Hon. Wm. Norris, 217 "Sansome Street, San Francisco."

"San Francisco, California,

"March 21, 1871.

"The Honorable Commissioner of the

"General Land Office,

"Washington City, D. C.

"Dear Sir:

I today telegraphed the Commissioner to ascertain "the quantity enuring to the California-Oregon Land "Company under Act of 25th July, 1866, Vol. 14, page

"289—also Statutes 1869, page 47, from Portland to "the Oregon Southern boundary, and whether the de- "ficiency in any given twenty miles may be made good "from the overplus within another twenty miles, or in "other words, whether under any recent rulings selec- "tions may be made along the whole length of the road "so as to make up the full quantity of land enuring un- "der the law of Congress.

(1st) I would be glad to have this data by letter also, "with full details giveing the quantity 'in place' and "separately that which may be awarded as 'Indemnity', "approximately, of course.

(2d) I request copies of list of such selections as may "have been already approved with,

"(3d) Copy of any list which may have been received "and is now under examination at the Department with "a view to approval.

(4) Please cause me to be officially notified of the "receipt at the Department from time to time of lists "for approval, giving quantity in each, stating the "amount 'in place' and that claimed as 'Indemnity.'

"(5th) It is important, and I therefore request to "be advised of the date of orders for withdrawal from "time to time, with lists of the townships embraced in "such withdrawals, and date of reception of each at the "District Land Office.

"(6) Also plezse send verified lists of approved se-"lections as rapidly as approved to Hon. Wm. Norris, "California-Oregon Land Company, No. 217 Sansome "Street.

"The data now requested is not only important as a "right to the grantee under the Acts of Congress, but of "great public importance in opening up to settlement "and cultivation a most interesting region of our coun-"try, among the most remote from the Capital of the "political Mossaic blocks of the Union.

"The Company hasits agents in Oregon who are "arranging with great energy in the important work "before them of pushing forward the construction of "the road and making the selections as the law requires.

"Early action in the matters mentioned in the fore-"going will oblige very respectfully and truly yours,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C.

"April 7th, 1871.

"Hon. Jos. S. Wilson,

"San Francisco, California.

"Sir:

"I have the honor to acknowledge the receipt of your

"letters of 21st & 23d ulto. and say that we will fur-
"nish the requisite data, touching the Oregon and Cal-
"ifornia Rail Road, at as early a date as the pressing
"business of the office will allow.

"Very respectfully,

"Your obdt. servt.

"Willis Drummond,

Commissioner."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

'Washington, D. C. April 19, 1871.

"Hon. Jos. S. Wilson,

"Presd't. Pregon & Califa. Land Co.,

"San Francisco, California.

"Sir:

"Pursuant to your letters of 21st & 23d ulto. which
"receipt was acknowledged the 7th inst, I have the honor
"to present the following data and statement, respect-
"ing the grant by Congress of 25th July 1866, for the
"Oregon and California Rail Road Company of Oregon.

"First: *Estimated* length of road
"from Portland to the
"Southern Boundary Line of

"Oregon is 850 miles, and
"twenty *odd* sections, to the
"mile will make the area of
"the grant, *as estimated*
"4,480,000 acres. From this
"deduct the estimated quan-
"tity taken by Donation
"claims, sales and otherwise
"appropriated, 2,370,000 acres.

"Thusleaving after deduct-
"ing the foregoing, the esti-
"mated vacant *odd* sections
"falling within the granted
"limits, 2,110,000 acres.

"*Second* Estimated quantity of odd
"sections falling within the
"*indemnity* limits of ten ad-
"ditional miles set apart by
"said Act for said Company, 1,050,000 acres.

"Total amount estimated as
"available 3,160,000 acres.

"*Third*: Estimated quantity of the
"2,110,000 acres as lands 'in
"place' that fall within the
"Willamette Valley is acres
"—900.000

"*Fourth*: Estimated quantity failling "within the indemnity limits "of said road in the Willam- "ette V. 450,000

"Total 1,350,000 acres.

"You will find enclosed copy of List No. 1, embrac- "ing 32,517.80 acres selected in the Oregon City Dis- "trict. The same has been carried into patent, and as "soon as recorded will be ready for transmission.

"I also enclose sketch map showing line of road ac- "cording to the maps of survey filed pursuant to the "2nd section of said Act of July 25, 1866, as well as "copies of the order of withdrawal.

"You will be advised whenever the Commissioners "make their report, as required by the 4th section of "said act.

"In regard to the 6th section of the granting Act, "as amended by the Act of April 15th, 1869, requiring "the Company to file their assent within one year, I "have the honor to state, that such assent was filed in "the office of the Secretary of the Interior, June 24th, "1869.

Very respectfully,

"Your Obdt. Servt.

"Willis Drummond,

"Commissioner."

"Proclamation No. 685 & State Map transmitted
"May 29, 1871—See letter by Mr. Robinson.

"San Francisco, California,
"April 8, 1871.

"The Commissioner of the
"General Land Office,
"Washington City, D. C.

"Sir:

"Will you please cause to be sent to me copy of the "proclamation for public sales of lands in the State of "Oregon, indicating on an accompanying sketch may in "blue color, the several townships and parts of town-"ships which have been actually offered at public sale, "pursuant to proclamation, with dates of offering.

"Enclosed is a memo. of results made up by a gen-"tleman in Oregon as to the extent and quantity enur-"ing to the grant by Act of 25th July, 1866, Vol. 14. p "239, which I request may be tested by the records of "the office. Further, I would be glad to have sent to "me a few of the general agricultural circular of 23d "August, 1870, and mineral circular of 8th August, "1870.

"Rsepectfully,
"Your ob. Servt.,
Jos. S. Wilson,
"Care of Hon. Wm. Norris, No. 217 Sansome Street"

"*Special—*

"Item from report dated 18th March, 1871, at Sa-"lem, Oregon, from the agent of the Oregon and Cal-"ifornia Land Company, in view of the grant by Act of "25th July, 1866, the agent having been a resident of "Oregon for 19 years, and part of the time engaged "in practical surveying for the Government.

"(1st) By the terms of that Act—12,800 acres per "mile are granted, to be taken within the odd alternate "selections within 20 mile limits, each side, with the "right to indemnity within 10 miles beyond the 20 mile "limits.

"(2d) The road extends from Portland to the Cal-"ifornia line, a distance of about 350 miles.

"(3d) Making amount of land enuring to the Com-"pany upon completion of the road 4,480,000 acres. "Four million four hundred and eighty thousand acres.)

"In consequence of the earlier and denser settlement "of the lower part of the Willamette Valley, a much "larger proportion of the country is surveyed and "claimed by the settlers than is the case southward.

"(4) The Willamette Valley 150 miles from Port-"land, the road will enter the Umpqua and thence "through the Rouge River Valley to the California "line.

"(5) In the Umpqua and Rogue River Valleys the "settlements extend but few miles from the located line

"of road, but upon extension of the public surveys and "completion of the road a much fuller development of "the resources of that region is expected.

"The agent reports that he has selected by number "on lists, No. 1 to 7 inclusive, comprising the surveyed "lands within the limits of the grant from the base line "at Portland to the Southern limit.

"(6) of the Willamette (Oregon City) Land Dis- "trict at Township 14 South, 180,000 acres.

"(7th) There can be selected when the surveys are "completed within same limits 452,000.

"(8) Making in the Willamette at Oregon City "Land District a total of 632,000 acres.

"(9th) The length of the road in the Willamette "for Oregon City District is 96.66 miles.

"(10) The land to which the Company is entitled "for the same is 1,237,333 acres.

"(11) Amount as above surveyed and unsurveyed "632,000 acres, leaving a deficit of 605,000, which it is "supposed will be made good upon the extension of the "road southerly through the Umpqua and Rogue River "Valleys, where the settlements are more limited, and "so it is reported that in the agent's judgment the Com- "pany will be able to realize the amount of the entire "grant, acres 4,480,000.

"Note. Referring to the 5th head in the foregoing please

"state whether instructions have been despatched to "make the Oregon surveying approximation available, "and whether S Genl's attention has been drawn to the "necessity of completing the survey in order to make "the Congressional grant available.

"Note. Referring to the 6th head in the foregoing— "Have the 7 lists of selection there mentioned been re- "ceived by the Dept, embracing 180,000 acres, and when "will they be prepared for approval.

"Please carefully examine the data furnished in the "foregoing from the thoroughly agent of the Company "in Oregon and let me be fully advised as to the results "with answers to inquiries Note 5 and 6.

"I request half dozen of each of the circulars—the "general agricultural circular of 23d August, 1870 and "that of the minerl of 8th August 1870.

"April 3d, 1870. "Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., April 21st, 1871.

"Hon. Jos. S. Wilson,

"Presd't. Oregon & Califa. Land Co.,

"San Francisco, Califa.

"Sir:

"Pursuant to your letter of 3d inst., I have the honor

"to transmit herewith half a dozen of each of the cir-
"culars—The General Agricultural Circular of 23d
"August, 1870, and that of the Mineral of August 8th,
"1870.

"I have also to report that the Lists of selections re-
"ferred to under 6th Head, as having been made by the
"Oregon & California Railway Company in the Oregon
"City District, have not reached this office.

"The requisite data as to the available lands to go
"to said Railway Company in the Umpqua and Rogue
"River Valleys and thence to the California State line,
"will be ascertained and given in separate communica-
"tions as well as information relative to the surveys in
"Oregon.

"Very respectfully,

"Your Obdt. Servt.

"Willis Drummond,
"Commissioner."

"WESTERN UNION TELEGRAPH
"COMPANY.

"Dated San Francisco, May 17, 1871. Received at
"Washington, D. C. 8:45 A. M.

"To Hon. Commissioner Genl. Land Office.

"Please telegraph when Rail Road patent mentioned
"in commissioner's letter of nineteenth of April may be

"expected, also as to these or lists three, four, five, six "seven.

"Jos. S. Wilson.

"Care Wm. Norris."

"Telegram.

DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C. May 18, 1871.

"Rail Road patent No. 1, transmitted 9th inst., to "I. R. Moores, Salem, Oregon. Lists three to seven "inclusive just received.

"W. W. Curtis,

"Actg. Commissioner.

"Hon. Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal."

"San Francisco, California,

No. 320 California Street,

"May 12th, 1871.

"To the Hon'ble Commissioner of the General Land "Office,

"Washington, City, D. C.

"Sir:

"By letter of the 29th ulto. from the Company's

"Land Agent in Oregon, I understand that additional "Lists (No. 3, 4, 5, 6, 7) have been sent to Washing- "ton, of lands enuring to the Oregon and California "Rail Road Company under the Act of Congress ap- "proved 25th July, 1866. Those lists (with Nos. 1 & 2) "embrace the quantity of acres 174,846.73 of that "quantity the selection of a 32,517.20 has been approved, "and the receipt of the Patent expected according to ad- "vices in the Commissioner's letter of the 19th April "last. I beg leave to request that the 5 Lists above re- "ferred to may be examined and as far as correct may "be approved and carried into Patent at an early period.

"The heavy expenses incurred in realizing the pur- "pose of Congress in regard to the construction of the "railway and telegraph at so distant a point made it a "serious concern to the grantees to have the patents "so as to make the means available that are allowed by "the statute which can only be done after the issuing "of the patents.

"I should feel obliged if you will advise me at about "what time it is probable that final action may be ex- "pected in respect to the approval and transmission of "the patents in these cases.

"Very respectfully,

"Your Ob. Servt.,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., June 1, 1871

"Hon. Jos. S. Wilson,

"San Francisco, Califa.

"Sir:

"I have the honor to acknowledge the receipt of your "letter of the 12th ulto, and state that Lists Nos. 3, 4, "5, 6 & 7, of the Oregon and California Railroad selec- "tions in the Oregon City district, Oregon under the "Act of July 25th, 1866, and embracing in the aggre- "gate, 141,587.76/100 acres, were received on the 18th "ulto. They will be designated upon our records, ex- "amined and listed for approval at the earliest practi- "cable period.

"Very respectfully,

"Your obdt. servt.

"Willis Drummond,

"Commissioner."

"WESTERN UNION TELEGRAPH

"COMPANY.

"Dated San Francisco, Cal., 18 July, 1871. Re-
"ceived at 9:35 A. M.

"To Hon. Com'r. Gen. Land Of.

"Please telegraph me when Oregon & California
"R. R. patent Number two may be expected.

"Jos. S. Wilson

"Telegram.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"July 19, 1871

"Sir:

"Oregon and California Rail Road Patent number
"two ready for transmission on 22nd.

"Willis Drummond,

"Commissioner.

"Hon Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal.

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY.

"San Francisco, Cal., September 29th, 1871.

"Hon. Commissioner of the General Land Office,

"Washington City, Dist. Col.

"Very respectfully,

"Col. I. R. Moores, Portland, Oregon, has written "me under date of the 16th instant, in regard to Patent "No. 2 in favor of the 'Oregon and California Rail Road "Company', which was transmitted to him under date "July 22d, 1871, from the General Land Office, and in "which the following appears, viz:

"1st. The said Patent calls for the S. 1/2 of the "N. W. ¼ of Section 33 in Township 8 South of Range "1 E. and as containing 160 acres. The true area of the "tract is only 80 acres, but the subdivisional description "in the patent controls quantity, and only conveys the "aforesaid S. ½ of the N. W. ¼.

"The intention in the description coupled with said "quantity was doubtless to convey to the Company the "other subdivision of its land in said section, viz: The "S. ½ of the N. E. ¼ of Sec. 33, R. S. 1 E., because "the two subdivisions just make up the quantity of 160 "acres as given in said patent.

"To relieve the case from difficulty, I request you "will order a list in the usual form to be officially ap- "proved for said S. ½ of the N. E. ¼ of Sec. 33, 8 S. "1, containing 80 acres, so as to furnish evidence of the "Company's right to this tract, which lawfully enures "to it under the Act of Congress, approved 25th July, "1866, U. S. Statutes, Vol. 14, page 239.

"I ask that this matter may receive prompt atten- "tion, and in sending transcript to Col. I. R. Moores, at "Portland, Oregon, I should be glad if a copy at the "same time be sent to the undersigned.

"2d. The aforesaid Patent No. 2 embraces the fol- "lowing portions of Sec. 19, Township 5 S. R. 3 E., viz:

"The S. ½ of said Sec. 19

"The S. ½ of N. W. ¼ Sec. 19

"The N. W. ¼ of N. W. ¼ Sec. 19

"The SW ¼ of NE ¼ Sec. 19

"Containing 526.78 Acres.

"On examination of the transcript plat of said town- "ship the donation claim of Clifton R. Calaghan is "found there represented as embracing the greater por- "tion of the land embraced in said subdivision.

"3. Another inadvertance is reported as existing "in said patent which embraces Lots numbered 1, 2, 3, "and 4 of Section 31, containing 68.44 acres in Township "6 South of range 5 West, whilst it is reported that three

"of these lots, Nos. 2, 3, 4 are included in the donation "claim of G. B. Savery, leaving only lot No. 1 in that "section belonging to the Company. I have not, how- "ever the transcript plat before me, but present the mat- "ter as reported.

"The object of this is to request that a careful ex- "amination be made, and that I may be advised of the "exact status of each of the donation claims referred "to, viz: of Clifton R. Callaghan & G. B. Savery.

"I should be glad to be informed if they have been "finally recognized as valid and patented, so that a prop- "er marginal note and entry may be made in order that "the Company may not interfere in the way of disposal "of any portion of the premises taken by a prior valid "claim, where such exists.

"Early information in regard to the 2d and 3d cases, "and compliance with the application under the 14th "head is requested by Very respectfully your ob. servt.,

"Jos. S. Wilson."

"WESTERN UNION TELEGRAPH
"COMPANY.

"Dated San Francisco, Cal., 18 Nov., 1871. Re- "ceived at 8:55 A. M. 21st.

"To Com'r. General Land Office.

"Suspend action on large list Oregon selections or

"railroad lands from Roseburg to California line. Tele-
"graph acknowledgment. Grounds for rejection mailed.

"Jos. S. Wilson.

"Answer to telegram Nov. 21st. Cromwell."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Nov'r. 21st, 1871.

"Telegram of the 18th inst., received and noted.

"Willis Drummond,
"Commissioner.

"Hon. Jos. S. Wilson,
"San Francisco,
"California."

"Collect."

"Office of
"EUROPEAN AND OREGON LAND
"COMPANY,

"San Francisco, Cal., 18th November, 1871.

"Hon. Commissioner of the General Land Office,

"Washington City, Dist. of Col.

"Sir:

"I received this morning a letter dated the 18th
"inst., at Portland, Oregon, from I. R. Moores, 'Ore-

"gon & California Railroad, Land Department', re-
"ferring to the fact that a preliminary survey was made
"by the Hon. Jesse Applegate more than a year ago
"of the definite location of the said Oregon and Califor-
"nia Railroad, under Act of Congress approved 25th
"July, 1866—Statutes Vol. 14 page 239—from 'A short
"distance from Roseburg to the California line' an
"authenticated map of which will soon be sent to the
"Department as the basis for Departmental orders of
"withdrawal.

"In the meantime I send herewith a map believed to
"be approximately correct, indicating the extended line
"of route in the region above mentioned, and understand-
"ing that 'a large list of selections made by the State
"authorities to lands within the limits' (20 and 30 mile
"lateral) which are fixed under the Statutory Grant of
"25th July, 1866, by the definite location and actual sur-
"vey of the route from a short distance as aforesaid, from
"Roseburg to the California line.

"My present object is to present this,

"1st. As a Caveat against any official action on
"said State Selection List until the receipt by the De-
"partment of the verified map of the said definite loca-
"tion and survey of the aforesaid railroad south of Rose-
"burg, and

"2nd. To ask that as soon as this latter map is re-
"reived by the Department that the State selection may
"be definitely rejected of any and all tracts enuring

"under the Statutory Grant aforesaid, and the estab-
"lished decisions to the aforesaid Railroad company
"and that the undersigned may be promptly advised of
"the official action in this respect.

"Requesting an acknowledgment of the receipt of
"this, I remain,

"Respectfully,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,

"Jan'y. 4th, 1872.

"Hon. Jos. S. Wilson,

"San Francisco, Califa.

"Sir:

"I have the honor to acknowledge the receipt of your
"letter of 18th Novr. last, and the accompanying pre-
"liminary map, indicating the extended surveying line
"of route of the Oregon & California Rail Road from
"a point near Roseburg, Oregon, to the California State
"line.

"In regard to the State selection List—made with-
"in the limits of said Railroad, South of Roseburg, I
"have to say has not yet reached this office, but when
"received, official action will be suspended until said

"Railroad limits are fixed according to the map to be "filed soon, duly authenticated.

"Very respectfully,

"Willis Drummond,

"Commissioner."

"Office of

"EUROPEAN AND OREGON LAND "COMPANY,

"San Francisco, Cal., January 9th, 1872.

"Honble Commissioner of the General Land Office,

"Washington City, D. C.

"Sir:

"By letter dated 26th ulto. at Portland, Oregon, "from Col. I. R. Moores, Agent of the Oregon and Cali- "fornia Railroad Company, I am advised that a map, "in good shape, has been transmitted to the Department "showing the definite location of the route of the Rail- "road from Township 30 South to the California line.

"I beg leave therefore respectfully to ask,

"1st. That immediate orders may be given to the "Register and Receiver for the withdrawal of the odd "numbered sections enuring to the Company under the "Statutory Grant by Act of Congress approved 25th "July, 1866, United States at large, Vol. 14 page 289;

"and that

"2nd. A copy of the orders of withdrawal may be "sent to the undersigned, with

"3d. A copy of the sketch map which may be sent "to the Register and Receiver, as their guide and basis "of withdrawal, such maps, involving comparatively in-"considerable labor as they are usually prepared on "printed sheets of Townships, in a scale of an inch and "a half to a township, indicating the line of route with "the 20 and 30 mile lateral limits.

"A prompt acknowledgment, and compliance will "oblige the Company, and undersigned, and be of real "service not only to said Company, but in such prompt "award of the right under the law, conflicts of title will "be avoided, whilst at the same time the interest of the "United States will be directly advanced by enabling "the Government to realise the double minimum for the "even numbered sections of public lands within the "range of the Grant.

"Respectfully,

"Jos. S. Wilson, Prest."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, Cal., October 26th, 1871.

"The Hon. Commissioner of the General Land Office,

"Washington City, Dist. Col.

"Sir:

"By letter of the 21st instant from I. R. Moores,, "Esq. Portland, Oregon, I am advised that Lists of "selections of lands in the Roseburg Land District, Ore- "gon, enuring under the Act of Congress approved 25th "July, 1866, to the Oregon and California Railroad "Company, were transmitted about the 1st instant by the "Register of the Land Office at Roseburg to the Gen- "eral Land Office.

"These Lists embrace an aggregate of

"Lands 'in place' of acres	235,441.19,
" 'Indemnity' lands	26,588.89

Acres 262,030.8/100.

"There is reason to believe that in the preparation of "these Lists every precaution was used to avoid con- "flict, secure accuracy, and make them as complete as "possible, it having been reported to me that 'the Regis- "ter thinks every tract will be patented as he was very "careful.' This preliminary painstaking will necessarily

"lessen the labor of official examination, and facilitate "the preparation of the official lists for approval, and "as it is a matter of supreme importance to the interests "of the Company to have, at an early period, the usual "lists of approval in view of the enormous outlays re- "quired in constructing this railway to span Western "Oregon from north to south, I beg leave earnestly to "request that you will cause the work to be immediately "placed in hands, and that the desired transcript Lists "of approval may be transmitted with all practicable "despatch, and if they should be sent within the ensuing "month to I. R. Moores, Land Agent of the Company "at Portland, Oregon, and the undersigned advised of "the fact, he would feel greatly obliged.

"Very respectfully,

"Your obt. servt.,

"Jos. S. Wilson, Pres."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., Jan. 25, 1872.

"Hon. Jos. S. Wilson,

"San Francisco, Cal.,

"Sir:

"I have the honor to advise you in regard to the "Oregon & California Railroad lists of selections in Ore-

"gon, which were the subject of your letters of 26th "October and 30th Decr. last, that the same were duly "received 7th Oct. 1871, and have been designated upon "the tract books of this office.

"I have further to state, that said lists No. "1 and 2—Roseburg district—embracing in the ag- "gregate 262,038.8/100 acres, are lands lying south, & "beyond the constructed 4th section of twenty miles of "said road, as shown by certificates on file, and accord- "ing to the terms of the 4th section of the granting act "of July 25th, 1866, the lands this embraced in said "lists will have to await the filing of advanced construct- "ed sections of road—before any steps can be taken to- "ward the patenting of said selections.

"Very respectfully,

"Willis Drummond,

"Commissioner."

"Office of

"EUROPEAN AND OREGON LAND "COMPANY,

"San Francisco, Cal., December 30th, 1871.

"The Hon. Commissioner of the General Land Office.

"Washington City, Dist. of Col.

"Sir:

"On the 26th of October last, I had the honor to

"address a communication to the Commissioner referring "to certain Lists of selections sent by the Register at "Roseburg about the 1st of that month for lands enur- "ing to the Oregon and California Railroad Company "under the Congressional Grant by Act of 25th July, "1866—Statutes Vol. 14, page 289.

"Great care was observed in preparing those lists, "so as to avoid any interference with the rights of others, "and render them as complete and accurate as possible, "in order that by lessening the labor of Departmental "examination, prompt official action might be secured, "and in inviting attention to the subject, the hope was "expressed that the work might be completed within "the month of last November.

"As I have received no intimation as to what has "been done, now acknowledgment, and as the early ap- "proval of the lists is a matter of grave and most press- "ing importance to the Company in view of very heavy "outlays, and the necessity for making immediately "available the lands which have been granted, I am con- "strained again to trouble the Commissioner by asking "that the work be pressed to completion, & the requisite "list of approval forwarded at the earliest period pos- "sible, thereby rendering legitimate service to the Com- "pany, and obliging the undersigned.

"Requesting an acknowledgment of the receipt of "this, and advice as to the time the approval may be "expected, I remain

"Very respectfully,

"Jos. S. Wilson,

"Pres."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, Cal., Jan. 17th, 1872.

"The Hon. Commissioner of the General Land Office.

"Washington City, D. C.

"Sir:

"I have received your letter of the 4th instant "acknowledging the reception of mine of the 18th No- "vember last accompanied by preliminary map of the "route of the Oregon and California Railroad from "near Roseburg to the California line.

"Since then the formal authenticated map has been "transmitted, as mentioned in my communication of the "9th inst. requesting the immediate issue of the orders "of withdrawal & that I might be furnished with a copy "of the same, and of the connected plat sent to the Dis- "trict Land Officers as the basis of withdrawal.

"I learn from your favor of the 4th inst. first above "referred to, that the State Selection List (Agricultural "College) which I had reason to suppose had been sent "to the Department, embracing odd numbered sections "belonging to the Company, had not reached the Gen- "eral Land Office. I had received information that "such selections had been made right on the track of, "and adjacent to the actually established railroad route "in townships 38, 39 & 40 South, of Range 9 & 10 East.

"Should such selections interfering with the prior vested "rights of the Company to the odd sections in lateral "limits be presented, it is earnestly requested, as a simple "act of justice to said Company, that the cancellation of "the same be immediately ordered, and then the State "authorities can select other lands extending if desired, "so the even numbered sections under the statutory lim- "itations.

"Your prompt compliance both as to the issue of the "orders of withdrawal, and cancellation of the invalid "interfering sections, will, in subserving the ends of jus- "tice, oblige the Company and

"Very respectfully,

"Jos. S. Wilson.

"Prest."

"FRANKLIN TELEGRAPH CO.

"Feby. 20, 1872.

"By telegraph from San Francisco

"To Willis Drummond,

"Commissioner G. L. O.

"Is Oregon and California Railroad map recd. & "withdrawal order given.

"Jos. S. Wilson

Prest. E. & O. L. Co.,

"420 California St."

"Telegram.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Feby. 24th, 1872.

"Sir:

"Map of Oregon and California Railroad received "and under consideration.

"Willis Drummond,

"Commissioner.

"Hon. Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal.

"Collect."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, February 24th, 1872.

"Honble. Commissioner of the General Land Office.

"Washington City, D. Col.

"Sir:

"Your letter of the 25th ulto, retarded in its transit "by snow obstructions, has come to hand, acknowledging

"the receipt on 17th October last of Roseburg Land "District Selections in Lists Nos. 1 and 2 which are the "subject of letters to you from the undersigned of the "26th October and the 30th December last.

"The Commissioner referring to the 4th section of "the Act of Congress approved 25th July, 1866 (Vol. "14, page 239) making the Grant for the construction "of the Oregon and California Rail Road, properly "states that the lands 'embraced in the said Lists, will "have to await the filing of advanced constructed sections "of road, before any steps can be taken towards patent-"ing of said selections.

"Aware of that fact, it will be seen that in the letters "above mentioned of 26th October and 30th December "no application is made for the patent. Their issue will "necessarily have to be deferred until the preliminary re-"quirements as to further constructed sections shall have "been met. What is not wanted, however, and to which "there is no legal interdict, is that the Lists shall be tak-"en up, examined and tested and where the selections are "found perfectly regular, and correct, and free from in-"terference, that the usual List of approval may be fur-"nished at the same time it would be a gratification to "the Company to have transcript of the approved List, "so as to be certain as to the particular lands enuring "under the Grant, on which they can rely as a land "fund, and for which ultimate title as stipulated in said "4th section is to be given by patent, upon meeting the "statutory requirements aforesaid. The request is there-

"fore respectfully renewed for prompt transmission of "the issued List.

Very respectfully,

"Jos. S. Wilson.

"Prest."

DEFENDANTS' EXHIBIT 379

is a certified copy of map showing the definite location of the line of the Oregon Central Railroad under the act of May 4, 1870, under seal of the General Land Office.

This map is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 380

is a statement purporting to show in a general way the financial operations of the Oregon Central Railroad Company (East Side), the Oregon Central Railroad Company (West Side), and the Oregon & California Railroad Company as gathered from records of meetings of directors and stockholders of said companies, and is as follows:

STATEMENT SHOWING IN A GENERAL WAY THE FINANCIAL OPERATIONS OF THE OREGON CENTRAL RAILROAD COMPANY (EAST SIDE), THE OREGON CENTRAL RAILROAD COMPANY (WEST SIDE) AND THE OREGON & CALIFORNIA RAILROAD COMPANY AS GATHERED FROM THE RECORDS OF MEETINGS OF DIRECTORS AND STOCKHOLDERS OF SAID COMPANIES.

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
3/17/70	O&C RR incorporated and issued Capital Stock	$20,000,000.00			
3/29/70	O&CRR Co. acquired OCRR Co. (East Side) under agreement to pay Ben Halladay & Co. amount invested			1,000,000.00	1,000,000.00
4/14/70	O&CRR Co. issued 1st Mortgage Bonds US Bill of Complaint in		10,950,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Suit 3340 alleges (P 26) this bond issue produced in cash, approximately				8,000,000.00
	it does not appear from the O&C records what amount was produced.				
About 10/6/80	O&CRR Co. acquired OCRR Co. (West Side) subject to outstanding bonds		4,395,000.00		
	Pledged as collateral for two notes			1,000,000.00	1,000,000.00
	Outstanding 2nd Mortgage Bonds		300,000.00		300,000.00
	And with the following investment:				

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Cash paid on Capital Stock....				47,531.17
	Net earnings from operation...				38,657.81
	Rental received from Western Oregon RR.....				23,250.00
	Note due Northwestern Construction Company.....			13,006.82	13,006.82
	Amount due O&CRR Co.....				120,997.40
	Individual Subsidies.....				95,466.24
	Cash received from sales of Granted Lands.....				4,934.69
	Rental due from WORR Co....				1,750.00
	Interest covering two notes for $1,000,000.00			612,796.34	

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Unpaid interest coupons on 2nd Mortgage			84,000.00	
	Accrued interest on last item after maturity			13,230.00	
2/1/81	O&CRR Co. Capital Stock reduced by surrender	18,240,800.00			
	Upon the remaining $1,759,200.00, Capital Stock, full payment was made				1,759,200.00
	New 1st Mortgage Bonds issued		2,000,000.00		2,000,000.00
	O&CRR Co. acquired Western Oregon R. R. Co., subject to cost of construction due Northwestern Construction Co.		1,520,564.05		1,520,564.05

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
5/7/81	O&CRR Co. increased Common Stock by	5,240,800.00			
	O&CRR Co. issued Preferred Stock	12,000,000.00			
	O&CRR Co. issued General Mortgage Bonds		6,000,000.00		5,280,000.00
	Original O&CRR Co. 1st Mortgage Bonds and Interest Coupons surrendered for new Preferred and Common Stock (except a small amount, for which indemnity was provided) and bonds were cancelled.....		10,950,000.00		
	New O&CRR Co. 1st Mortgage Bonds were paid and cancelled..		2,000,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Reorganization Discounts and commissions on $1,414,000.00 Capital Stock sold.....				887,712.39
	Reorganization Expenses paid in Capital Stock				435,000.00
	Reorganization Expenses paid in Cash				208,439.36
8/20/81	Two West Side notes cancelled...			1,000,000.00	
	Interest thereon cancelled.....			612,796.34	
	West Side 1st Mortgage Bonds cancelled		4,395,000.00		
	West Side 2nd Mortgage Bonds cancelled		300,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Interest on 2nd Mortgage Bonds cancelled			97,230.00	
	WORR Mortgage to Northwestern Construction Co. cancelled...		1,520,564.05		
	West Side note to Northwestern Construction Company cancelled.			13,006.82	
	The situation being.....	19,000,000.00	6,000,000.00	1,000,000.00	19,674,206.43
	US Bill of Complaint (P 28) alleges that all of the then existing indebtedness was fully paid and discharged. This is confirmed by the O&C records, except as to the amount which was to have been paid to Ben Halladay & Co.,				

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	shown herein as Floating Debt $1,000,000.00.				
2/5/83	O&CRR Co. issued additional General Mortgage Bonds.....		1,000,000.00		1,000,000.00
	U S Bill alleges (P 30) that this issue and that of 5/7/81 produced approximately $5,000,000.00.				
6/27/84	In settlement with Oregon & Transcontinental Company, O&C RR Co. agreed to pay on account of construction, within six months			446,000.00	446,000.00
Prior to					
3/7/87	O&CRR Co. had issued bonds under the 2nd Mortgage of 5/26/83.		2,610,000.00		2,610,000.00

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
Prior to					
6/27/88	O&CRR Co. had additionally issued under the General Mortgage of 6/1/81		2,020,000.00		2,020,000.00
7/1/87	O&CRR Co. made its mortgage to the Union Trust Company and issued bonds		20,000,000.00		20,000,000.00
6/27/88	All outstanding bonds of the General Mortgage of 6/1/81 were cancelled		9,020,000.00		
	All outstanding bonds of the 2nd mortgage of 5/26/83 were cancelled		2,610,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
Prior to					
9/4/08	O&CRR Co. had paid through sales of Granted Lands, bonds of the 7/1/87 mortgage.....		2,500,000.00		
	Leaving outstanding as alleged in the U S Bill (P 38) $17,500,000.00				
	The situation then being.....	19,000,000.00	17,500,000.00	(x)1,446,000.00	45,750,206.43

(x) It is presumed that the items constituting this amount have been taken care of in some manner, but the O&CRR Co. records do not show how.

DEFENDANTS' EXHIBIT 881

is circular No. 208, "The Three Year Homestead Law," issued by the Department of the Interior February 18, 1913, addressed to the Commissioner of the General Land Office.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 382

SUMMARY of PATENTS

to

OREGON AND CALIFORNIA RAILROAD COMPANY.

———o———

(No patents have been issued to)
(Oregon Central Railroad Company)

First:

PATENTS under Act of July 25, 1866, and amendments thereto.

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866 and Jun. 25, 1868	Clackamas, Multnomah, Yamhill, Washington	5/9/71	1	32,517.21		
Jul. 25, 1866 and Jun. 25, 1868	Benton, Polk, Linn, Clackamas, Marion, Multnomah, Washington Yamhill.	7/12/71	2	72,417.65	47,829.81	
				Total under acts of 1866 & 1868		152,764.67

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Benton, Coos,					
Jun. 25, 1868 and Apr. 10,1869	Lane, Linn, Douglas,	5/29/72	3	42,729.16	26,332.47	
Jul. 25, 1866						
Jun. 25, 1868 and Apr. 10,1869	Clackamas Multnomah,	6/22/76	4	8,070.46	6,559.21	
Jul. 25, 1866	Benton, Lane	6/18/77	5	86,622.71		
Jun. 25, 1868 and Apr. 10, 1869	Polk, Linn, Clackamas, Multnomah,					

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Marion, Yamhill, Washington.					
	Forward,					152,764.67
Jul. 25, 1866	Benton, Coos,	2/20/98	6		123,475.82	
Jun. 25, 1868 and Apr. 10, 1869	Clackamas, Douglas, Lane Lincoln, Linn, Marion, Polk, Tillamook,			(Includes 6363.28 acres of West Side Primary Lands not within East Side grant limits)		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Washington, Yamhill,					
Jul. 25,1866	Coos, Curry	8/8/93	7		71,081.41	
Jun. 25, 1868 and Apr. 10,1869	Douglas, Lane, Josephine, Linn, Marion Polk, Yamhill, Tillamook			(Includes 240 acres of West side Primary lands not within East Side Grant limits)		
Jul. 25, 1866	Benton,	8/8/93	8		97,929.67	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jun. 25, 1868 and Apr. 10, 1869	Jackson, Lane Klamath, Douglas, Yamhill					
			Total under acts of July 25, 1866, June 25, 1868, and April 10, 1869,			462,800.91
			Total under patents reciting Acts in addition to Act of July 25, 1866			615,565.58

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Coos, Curry, Douglas, Jackson, Josephine, Klamath	6/11/94	9		152,409.48	
Jul. 25, 1866	Benton, Coos, Douglas, Lane, Jackson, Linn, Josephine, Klamath, Marion, Yamhill, Washington.	12/3/94	10	229,948.52		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Benton, Coos, Curry, Klamath, Douglas, Lane, Jackson, Linn, Lincoln Yamhill.	4/28/95	11		52,897.89	
				229,943.52	204,806.82	
	Forward,					615,565.58
	Forward,					615,565.58
Jul. 25, 1866	Josephine, Jackson.	4/24/95	12		11,455.62	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine, Jackson.	4/27/95	18	83,889.76		
Jul. 25, 1866	Klamath	5/14/95	14		480.	
Jul. 25, 1866	Benton, Polk Linn, Yamhill	5/14/95	15		16,942.26	
Jul. 25, 1866	Douglas, Jackson.	10/9/95	19		10,464.96	
Jul. 25,1866	Douglas, Josephine, Jackson.	10/9/95	20		11,147.91	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas Coos, Benton.	12/13/95	22		13,528.49	
Jul. 25, 1866	Douglas	12/13/95	23		4,194.12	
Jul. 25, 1866	Lane, Klamath, Douglas, Benton, Jackson	12/16/95	24	150,269.98		
Jul. 25, 1866	Lane, Klamath, Linn, Douglas Benton, Jackson.	12/17/95	25	203,947.91		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Coos.	1/20/96	27	21,818.84		
Jul. 25, 1866	Lane,	1/21/96	29	640.		
Jun. 22, 1874 lieu land in even section.	Marion,	2/12/96	31		(80.)	
Jul. 25, 1866	Lane, Douglas, Jackson.	2/21/96	32	952.19		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul.25, 1866	Benton, Polk Linn, Marion, Yamhill.	3/12/96	34	4,162.53		
Jul. 25, 1866	Douglas Forward.	3/13/96	35		160.	615.565.58
				695,619.23	273,180.18	
	Forward.			695,619.23	273,180.18	615,565.58
Jul. 25,1866	Clackamas, Marion.	3/14/96	36		26,988.51	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson	3/17/96	38	107,585.96		
Jul. 25, 1866	Lane, Douglas, Jackson.	3/16/96	39	59,098.60		
Jul. 25, 1866	Jackson.	4/17/96	41	1,601.38		
Jul. 25, 1866	Douglas, Josephine, Jackson.	5/6/96	42	259,851.46		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson, Josephine.	5/5/96	43	112,479.84		
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson	5/2/96	44	13,417.07		
Jul. 25, 1866	Polk,	5/2/96	45		4,185.80	
Jul. 25, 1866	Lane Josephine	5/7/96	46		5,185.00	
Jul. 25, 1866	Linn	5/7/96	47		6,366.90	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Klamath	5/12/96	48	638.24		
Jul. 25, 1866	Coos, Jackson.	5/20/96	49		242.60	
Jul. 25, 1866	Lane	7/10/96	51		10,534.71	
Jul. 25, 1866	Linn,	7/15/96	52	31.82		
Jul. 25, 1866	Marion,	7/28/96	53		2,037.09	
Jul. 25, 1866	Douglas,	7/28/96	54		11,461.44	
Jul. 25, 1866	Lane,	7/28/96	55		5,868.14	
Jul. 25, 1866	Lane, Douglas,	7/28/96	56	14,884.84		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane,	8/19/96	57		402.01	
Jul. 25, 1866	Douglas,	8/19/96	58		156.52	
Jul. 25, 1866	Douglas,	10/13/96	61		5,938.89	
	Forward.			1,264,708.44	852,447.29	615,565.58
patent summary						
				1,264,708.44	852,447.29	615,565.58
Jul. 25, 1866	Douglas	10/22/96	63			
	Josephine			29,156.92		
Jul. 25, 1866	Douglas	10/28/96	64		120.	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas Josephine	11/24/96	66		110.	
Jul. 25, 1866	Lane, Linn,	12/ 7/96	67		400.	
Jul. 25, 1866	Douglas	12/ 8/96	68	3,425.80		
Jul. 25, 1866	Benton, Polk Marion, Yamhill, Washington.	12/ 7/96	69	352.89		
Jul. 25, 1866	Benton, Polk, Marion.	1/30/97	70	190.17		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Polk Tillamook	1/30/97	71		440.	
Jul. 25, 1866	Jackson	2/30/97	72	200.51		
Jul. 25, 1866	Lane, Douglas, Polk, Yamhill.	2/4/97	73		2,010.05	
Jul. 25, 1866	Polk	2/16/97	74	20.		
Jul. 25, 1866	Linn	2/26/97	77		40.	
Jul. 25, 1866	Lane, Linn, Douglas	2/27/97	78	120.		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine, Jackson	3/3/97	80	1,054.16		
Jul. 25, 1866	Lane, Douglas, Linn, Jackson, Josephine, Coos.	3/ 3/97	81		3,188.95	
Jul. 25, 1866	Yamhill	5/6/97	83		40.	
Jul. 25, 1866	Lane, Douglas, Benton, Jackson.	5/ 6/97	84		1,199.53	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Linn,	5/17:97	85		160.	
	Forward			1,299,228.89	360,105.82	615,565.58
Patent Summary						
				1,299,228.89	360,105.82	615,565.58
Jul. 25, 1866	Jackson Douglas,	5/17/97	86		400.	
Jul. 25, 1866	Coos, Curry, Jackson	6/15/97	87		960.	
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson.	7/ 8/97	88	9,207.77		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine.	7/ 9/97	89		1,478.60	
Jul. 25, 1866	Lane, Jackson, Douglas, Josephine,	9/ 2/97	90	1,315.28		
Jul. 25, 1866	Josephine	10/ 5/97	91		1,680.41	
Jul. 25, 1866	Douglas, Josephine, Jackson.	10/ 5/97	92	5,579.59		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson.	11/16/97	93	8,957.49		
Jul. 25, 1866	Douglas	11/16/97	94	73.36		
Jul. 25, 1866	Linn	12/ 4/97	95		2,241.55	
Jul. 25, 1866	Douglas, Josephine, Jackson,	12/ 4/97	96	1,529.48		
Jul. 25, 1866	Benton, Jackson,	12/ 4/97	97		80.	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson,	12/22/97	98	120.		
Jul. 25, 1866	Lane, Douglas,	1/10/98	99	17,019.09		
Jul. 25, 1866	Douglas, Josephine, Jackson,	2/ 9/98	100	3,306.90		
Jul. 25, 1866	Linn, Douglas, Jackson.	3/ 2/98	101	441.75		
Jul. 25, 1866	Curry, J'kson,	3/ 2/98	102		271.83	
	Forward			1,341,779.60	367,213.21	615,565.58
Patent Summary.						

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Forward			1,341,779.60	867,213.21	615,565.58
Jul. 25, 1866	Josephine	3/ 3/98	103	160.		
Jul. 25, 1866	Jackson	5/27/98	105	8,898.26		
Jul. 25, 1866	Jackson	6/29/98	106	442.28		
Jul. 25, 1866	Josephine	6/29/98	107		22.20	
Jul. 25, 1866	Linn,	8/31/98	108		440.	
Jul. 25, 1866	Douglas	9/28/98	109	5,787.48		
Jul. 25, 1866	Jackson	10/14/98	100	181.06		
Jul. 25, 1866	Douglas	10/15/98	111		5,898.07	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Josephine, Jackson	11/11/98	112	14,137.74		
Jul. 25, 1866	Douglas	12/30/98	113		13,012.36	
Jul. 25, 1866	Coos,	2/ 2/99	114		14,082.84	
Jul. 25, 1866	Jackson,	2/23/99	115	309.95		
Jul. 25, 1866	Benton, Polk, Linn, Marion, Washington, Yamhill, Clackamas.	2/25/99	116	1,467.85		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas.	3/20/99	117	19,582.14		
Jul. 25, 1866	Klamath, Lane, Jackson	3/29/99	118	766.33		
Jul. 25, 1866	Lane,	4/18/99	119	362.89		
Jul. 25, 1866	Klamath	4/20/99	120		80.	
Jul. 25, 1866	Jackson	5/11/99	122	360.		
Jul. 25, 1866	Lane	5/17/99	123	567.11		
Jul. 25, 1866	Linn,	5/22/99	124	2,863.39		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Jackson,	6/ 3/99	125	7,040.40		
	Forward			1,404,701.48	400,748.66	615,565.58
Patent Summary						
	Forward			1,404,701.48	400,748.68	615,565.58
Jul. 25, 1866	Douglas, Josephine, Jackson.	6/26/99	126	9,186.07		
Jul. 25, 1866	Jackson	6/30/99	127	969.58		
Jul. 25, 1866	Lincoln	7/10/99	128		11,585.28	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Benton,	7/21/99	129		6,914.23	
Jul. 25, 1866	Jackson,	8/10/99	130	400.00		
Jul. 25, 1866	Jackson,	8/22/99	131	4,552.04		
Jul. 25, 1866	Lane, Jackson, Douglas.	8/22/99	132	365.20		
Jul. 25, 1866	Jackson, Douglas,	8/22/99	133	2,428.66		
Jul. 25, 1866	Jackson,	8/22/99	134	2,676.33		
Jul. 25, 1866	Douglas,	9/ 7/99	135	120.00		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Jackson,	9/14/99	136	751.93		
Jul. 25, 1866	Lane, Klamath, Douglas,	11/29/99	137	560.28		
Jul. 25, 1866	Benton, Polk, Clackamas.	11/29/99	138	72.67		
Jul. 25, 1866	Lane, Douglas,	12/ 4/99	139	2,630.10		
Jul. 25, 1866	Josephine	12/ 4/99	140		40.00	
Jul. 25, 1866	Douglas, Josephine, Jackson.	12/ 6/99	141	1,131.36		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas,	12/ 6/99	142	481.80		
Jul. 25, 1866	Douglas, Josephine, Jackson.	12/ 6/99	143	1,616.51		
Jul. 25, 1866	Douglas	12/ 6/99	144	200.00		
Jul. 25, 1866	Douglas	12/ 6/99	145	26,582.12		
Jul. 25, 1866	Lane	12/ 6/99	146		2,541.95	
Jul. 25, 1866	Coos	12/12/99	147		11,312.16	
Patent Summary	Forward			1,459,425.63	488,142.25	615,565.58

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Forward			1.459,425.63	433,142.25	615,565.58
Jul. 25, 1855	Jackson	12/12/99	148	953.65		
Jul. 25, 1855	Douglas, Jackson.	12/15/99	149	243.34		
Jul. 25, 1855	Douglas Jackson Josephine.	12/18/99	150	2,848.99		
Jul. 25, 1855	Coos	12/20/99	151		11,,042.33	
Jul. 25, 1855	Josephine Jackson.	12/26/99	152	1,875.37		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Douglas, Josephine, Jackson.	1/ 5/00	153	1,689.20		
Jul. 25, 1855	Linn,	1/29/00	154		19,022.15	
Jul. 25, 1855	Douglas, Josephine, Jackson.	4/11/00	155	888.18		
Jul. 25, 1855	Lane	4/27/00	156		320.44	
Jul. 25, 1855	Douglas, Josephine, Jackson.	5/ 8/00	157	12,642.32		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Jackson	5/ 8/00	158	80.		
Jul. 25, 1855	Josephine	8/21/00	159		40.	
Jul. 25, 1855	Linn	8/16/00	160		160.	
Jul. 25, 1855	Jackson	8/16/00	161		800.58	
Jul. 25, 1855	Douglas Josephine	8/16/00	162	60.		
Jul. 25, 1855	Clackamas	9/13/00	163		7,143.51	
Jul. 25, 1855	Clackamas Multnomah	8/ 8/01	164	3,418.03		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Multnomah	8/ 8/01	165	320.		
	Forward			1,483,939.66	471,671.26	615,565.58
Patent Summary.						
	Forward			1,483,939.66	471,671.26	615,565.58
Jul. 25, 1866	Polk, Marion, Linn, Yamhill	8/ 8/01	166	162.72		
Jul. 25, 1866	Washington,	8/ 8/01	167	80.		
Jul. 25, 1866	Jackson, Douglas, Lane.	8/ 8/01	168	3,117.85		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Jackson.	8/ 8/01	169	2,043.90		
Jul. 25, 1866	Klamath	8/ 8/01	170		198.61	
Jul. 25, 1866	Linn	8/ 8/01	171		2,360.11	
Jul. 25, 1866	Yamhill, Washington.	8/ 08/01	172		48.77	
Jul. 25, 1866	Washington, Yamhill, Lincoln.	8/ 8/01	173		560.00	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson, Douglas, Lane, Coos, Curry.	8/ 8/01	174		2,158.37	
Jul. 25, 1866	Marion	8/ 8/01	175		536.29	
Jul. 25, 1866	Multnomah	8/ 8/01	176		4,295.88	
Jul. 25, 1866	Multnomah Clackamas	8/ 8/01	177		41,162.07	
Jun. 22, 1874 and Jul. 25, 1866 Lieu Land	Multnomah Linn Marion	1/24/02	178		(362.63)	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas Josephine, Jackson.	5/28/02	179	3,771.66		
Jul. 25, 1866 Jun. 22, 1874 lieu land in even sections.	Multnomah Marion	6/21/02	180		(199.11)	
Jul. 25, 1866	Clackamas	9/29/02	181	1,094.40		
Jul. 25, 1866	Linn, Jackson, Josephine	9/29/02	182		897.09	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Clackamas	9/29/02	183		8,408.44	
	Forward			1,494,214.19	531,791.89	615,565.58
Patent Summary.						
	Forward			1,494,214.19	531,791.89	615,565.58
Jul. 25, 1866	Josephine Jackson Douglas.	12/ 6/02	184	1,298.07		
Jul. 25, 1866	Linn,	12/ 6/02	185		328.52	
Jul. 25, 1866	Klamath,	12/ 6/02	186		6,312.92	
Jul. 25, 1866	Douglas	12/ 6/02	187		3,898.96	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas	12/ 6/02	188		10,099.40	
Jul. 25, 1866 Jun. 22, 1874 lieu land but in odd section.	Lane	2/18/03	189		(40.)	
Jul. 25, 1866	Josephine, Douglas.	2/18/03	190		19,876.97	
Jul. 25, 1866	Lane, Jackson, Coos,	3/16/03	191	513.28		
Jul. 25, 1866	Yamhill	3/16/03	192	40.		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Clackamas, Polk.	8/20/08	193		1,121.85	
Jul. 25, 1866	Klamath	8/20/08	194		4,190.16	
Jul. 25, 1866	Coos	8/20/08	195		240.	
Jul. 25, 1866	Clackamas Multnomah.	6/23/08	198		10,316.32	
Jul. 25, 1866	Jackson,	9/12/08	199	100.		
NOTE Following are without mineral restriction.						

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Klamath Yamhill	1/12/04	200		121.20	
Jul. 25, 1866	Douglas	2/ 9/04	201	89.17		
Jul. 25, 1866	Lane, Douglas, Linn, Coos, Jackson.	6/14/04	202	27,383.76		
	Forward			1,523,638.47	588,297.69	615,565.58
Patent Summary						
	Forward			1,523,638.47	588,297.69	615,565.58

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine.	10/28/04	203	11,744.95		
Jul. 25, 1866	Lane, Linn.	1/26/05	204		1,922.44	
Jul. 25, 1866	Douglas, Coos, Josephine.	2/ 3/05	205	20,006.55		
Jul. 25, 1866	Polk	4/27/05	206		160.55	
Jul. 25, 1866	Klamath, Douglas, Clackamas, Jackson.	5/ 5/05	207	791.69		
Jul. 25, 1866	Lane, Douglas,	6/ 5/05	208	2,677.40		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane	8/15/05	Sup 3	80.		
Jul. 25, 1866	Douglas,	11/ 9/05	209	151.22		
Jul. 25,1866	Washington	11/ 9/05	210		38.82	
Jul. 25, 1866	Josephine	12/ 7/06	211	20.		
Total primary, patented under act of July 25, 1866 only				1,559,120.28		
Total indemnity patented under act of 1866 only					590,419.50	
Total under patents mentioning only act of July 25, 1866						2,149,539.78

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Total acres patented under act of July 25, 1866. and acts amendatory thereof, prior to Sept. 4, 1908.						2,765,105.36
Jul. 25, 1866 Jun. 25, 1868 and Apl. 10, 1869	Douglas	6/21/09	Sup. 3		161.75	161.75
				Total		2,765,267.11
Forward (Act of 1866)						2,765,267.11
Second: PATENTS under Act of May 4, 1870.						

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Tillamook Columbia	10/ 9/95	16		12,349.64	
May 4, 1870	Multnomah	10/ 9/95	17	46,091.14		
May 4, 1870	Yamhill Columbia (Includes 249.07 acres of East side Indemnity lands) Tillamook Washington.					
May 4, 1870	Clarke Co. (Wn.)	10/ 9/95	18	1,630.11		
May 4, 1870	Clarke Co. (Wn.)	10/ 9/95	21	40.00		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4. 1870	Washington, Tillamook	12/14/95	26	32,968.11		
	(Pat. 26 includes 80 acres of East Side Indemnity lands)					
May 4, 1870	Washington, Columbia.	1/20/96	28	994.91		
May 4, 1870	Clarke (Wn.)	1/21/96	30	40.00		
May 4, 1870	Tillamook	2/21/96	33		13,003.26	
May 4, 1870	Columbia	3/16/96	37	160.00		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Tillamook	4/11/96	40	1,123.39		
May 4, 1870	Tillamook	6/ 6/96	50		8,201.22	
May 4, 1870	Tillamook	9/30/96	59		1,933.78	
May 4, 1870	Tillamook	10/13/96	60		655.80	
May 4, 1870	Tillamook	10/17/96	62	5,186.92		
(Pat. 61 includes 320 acres of East side Indemnity lands)						
May 4, 1870	Tillamook	10/23/96	65		988.96	
	Forward			88,194.58	37,172.66	2,765,267.11

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Patent Summary						
	Forward			88,194.58	37,172.66	2,765,267.11
May 4, 1870	Tillamook	2/16/97	75		400.00	
May 4, 1870	Multnomah Washington.	2/16/97	76	228.00		
May 4, 1870	Yamhill,	3/ 2/97	79	1,680.00		
	Tillamook. (Pat. 79 includes 1680 acres of East side indemnity lands.)					
May 4, 1870	Tillamook	5/ 6/97	82		80.00	
May 4, 1870	Columbia	3/ 8/98	104		72.75	
May 4, 1870	Tillamook	5/11/99	121		520.00	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Multnomah Columbia	3/20/03	196	200.00		
May 4, 1870	Tillamook	3/20/03	197		70.14	
	Total primary under act May 4, 1870.			90,302.58		
	Total indemnity under act May 4, 1870				38,315.55	
	Total under Act May 4, 1870.					128,618.13

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Total under Act of June 22, 1874 allowing selection of land in even sections, where base was wrongfully withheld (also reciting Act of July 25, 1866)						681.74
Total acres patented to O. & C. R. R. Co. under all grants, per records of counties of Oregon.						2,894,566.98

TMcA
L. H.

Patent summary.

DEFENDANTS' EXHIBIT 383

is certified copy of reports of Commissioners appointed to examine, and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine and report upon the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth sections of the Oregon & California Railroad from Portland to the Oregon and California state line, with the action of the President endorsed thereon.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 384

is a certified copy of the affidavit of H. Villard, of date January 8, 1883, which, omitting certificate of Recorder of the General Land office as follows: C

M. L. 268839— 1

State of New York)
(ss.
City & County of New York)

Henry Villard, having been duly sworn says:

That he is the President of the Oregon and California Railroad Company, which Company has succeeded to and become duly invested with and is now possessed of and entitled to all the grants, rights, fran-

chises and privileges conferred upon the Oregon Company by chapter CCXLII of the Laws of Congress, 1866 (14 U. S. Stat. 239), entitled—"An Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon"—Approved July 25, 1866, and the Acts amendatory thereof; and upon the Oregon Central Railroad Company, by Chapter LXIX, Laws of Congress, 1870 (16 U. S. Stat. 94), entitled—"An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon"—approved May 4, 1870.

That there has been already accepted and approved by the United States, as duly constructed under the provisions of the above recited Acts, those parts of said Oregon and California Railroad situated in Oregon, between East Portland and Roseburg, being 198 miles in length, and between Portland and St. Joseph and McMinnville, being about 50 miles in length.

That ever since the summer of 1881, and fully one year before the first day of December, Eighteen hundred and eighty-two, the work of duly constructing, completing and equipping the remaining parts of said railroad as defined in the above mentioned Acts, has been prosecuted by said Company continuously, actively and in perfect good faith, at an actual expenditure of large sums of money (several millions of dollars in amount), and in conformity with the will and de-

sire of Congress, as expressed in said Acts, that said lines of railroad should be speedily and thoroughly completed. And that, within the time above mentioned, substantial progress has been made towards the completion of said lines of said company, inasmuch as at least 45 miles of new road have, within that time, been constructed, completed and equipped in a thorough and first-class manner, and said new mileage is now in full operation as part of the railroad system of said Company; and at least 20 miles additional to the above are now partially constructed, and further construction still continues.

That by reason of the mountainous nature of the country through which said lines are being constructed, and on account of other natural obstructions, only overcome with the greatest difficulty and labor and at enormous expense, the above mentioned mileage is all that could be completed, with the utmost diligence, within the time above mentioned.

That said Oregon and California Railroad Company is now vigorously continuing said construction, in entire good faith; and it will continue the same without any unnecessary delay until its lines are fully completed in the manner specified in the Acts above recited.

Sworn to before me)
this 8th day of January)
1888.)

H. VILLARD.

L. R. Kidder
Notary Public (88)
New York Co.

(Seal.)

OREGON & CALIFORNIA

R. R. Co.

15 Jan'y 1883.

Asst Attny Genl
U. M. Seller

322

Henry Villard,
New York City,
8 Jan'y 1883.

Concerning the land grants to Oregon & California R. R. Co. and the Oregon Central R. R. Co.

M. L. 268887
C 4

DEFENDANTS' EXHIBIT 385

consists of the following:

H. R. Report No. 1664, 1st Session, 48th Congress, subject—"Unearned Land Grants"; recommitted to the Committee on Public Lands and ordered to be printed May 29, 1884;

Also H. R. Report No. 931, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed;

Also H. R. Report No. 930, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed; which exhibit is as follows:

48TH CONGRESS, 1*st Session.*

HOUSE OF REPRESENTATIVES.

REPORT No. 1664.

UNEARNED LAND GRANTS.

MAY 29, 1884.—Recommitted to the Committee on Public Lands and ordered to be printed.

MR. LEWIS, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany H. Res. 253.)

The Committee on the Public Lands, having had under consideration House resolution 253, *respectfully report as follows:*

The Commissioner of the General Land Office, in his annual report for the year 1883, after giving a tab-

ulated statement of the various land grants made to the different States, and to corporations to aid in building railroads, and in which the conditions of the granting acts had not been complied with, uses the following language:

The question of declaring a forfeiture of the foregoing grants, or any of them, is deemed an appropriate one for legislative consideration.

The time fixed in the granting acts for the completion of the roads expired, in some instances, in 1866, and, in other cases, at other periods down to 1882.

In the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed, whether within or out of the time prescribed. Your immediate predecessor suspended this practice prior to the meeting of Congress in December, 1880, but, as no legislative action was taken, you have held that under the decision of the Supreme Court of the United States you had no right to declare a forfeiture, or to further suspend the issue of patents for lands along the constructed portions of roads, even if the same had not been built within the prescribed time. The remaining lands are continued in the reservations established by law or under withdrawals made for the protection of the grants. Meanwhile settlers have entered upon some of these lands, and are anxious to know whether they must look to the railroad companies or to the United States for their titles.

The public demand for a definite settlement of the question whether a forfeiture is to be enforced in any of these cases is constantly pressed upon my attention. I consider it of very great importance that the earliest possible action should be taken either to revive the grants or to declare them forfeited. If it be the judgment of Congress that the grants should be revived, Congress may unquestionably prescribe the conditions of such revival; and if such action should be taken, I suggest that all actual settlers on the land be saved and secured in their rights and claims to land embraced in their settlements and improvements at the date of any such revival of the railroad grant.

Your committee have patiently and laboriously investigated the facts and law touching many of these land grants, and have reported many bills to this House forfeiting and restoring the lands to the public domain.

Many others remain yet to be examined, in regard to which bills have been introduced and referred to your committee, and all of which have for their object forfeiture of the grant.

So far they have failed to find one company that has complied with either the letter or spirit of the law (at least in the opinion of a majority of the committee), and considering the enormous amount of land involved we deem it of the highest importance to take any and every step possible to protect the rights of the Government, and especially of the people, in and to the pub-

lic lands which have been lavished upon different railway corporations to an alarming extent.

If it be true, as stated by the commissioner, that "in the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed whether within or out of the time prescribed," this fact of itself fully justifies the passage of the resolution.

Time forms an important element in all these land grants, or it would not have been so universally inserted in the acts of Congress.

It is a grave responsibility for an administrative officer to disregard any of the conditions the lawmaker has seen proper to attach to a grant of land for public or private purposes, and the fact that it has been done to any extent, however limited, warrants the adoption of proper enactments to prevent its recurrence.

That it would be highly improper to take any further steps towards the confirmation of any land grant wherein bills for their forfeiture are now pending in either branch of Congress does not admit of question, and no good reason can be urged why the Secretary of the Interior should not be armed with an authoritative declaration from Congress upon the subject.

It will not only relieve him from the "pressure of parties in interest' 'whose persistent demands await only the adjournment of this body to be renewed in full

force, but it will protect the rights of the people and doubtless eventuate in driving these wealthy corporations into the courts of the country where these contests must ultimately be determined.

In regard to the second section it is simply an enunciation of what your committee believe to be sound principles of law.

In Rice *vs.* Railroad Company (1 Black, 380), Mr. Justice Clifford, after citing various decisions, summarizes the law thus:

Taken together, these several cases may be regarded as establishing the general doctrine that whenever privileges are granted to a corporation and the grant comes under revision in the courts such privileges are to be strictly construed against the corporation and in favor of the public, and that nothing passes but what is granted in clear and explicit terms.

The court say, in Mills *et al. vs.* St. Clair County (8 How., 581.)

That if the meaning of the words be doubtful in a grant designed to be a general benefit to the public, they shall be taken most strongly against the grantee and for the Government.

Other authorities might be cited, but it is not deemed necessary.

Your committee recommend the following amendments:

Insert the words "in Congress" after the word "bills" in line 8 of the first section, and substitute the word "shall" for "should," in line 6 of the second section, and as thus amended they recommend the passage of the resolution.

JOINT RESOLUTION prohibiting the confirmation, certification, and patenting of unearned land grants.

Whereas numerous bills have been introduced in both branches of Congress to forfeit lands granted to aid in the construction of railroads, and many of such bills have been favorably reported to this House; and

Whereas, it is important that something should be done looking to a speedy settlement of the serious and vital questions growing out of the agitation of this subject in and out of Congress: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, prohibited from taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where reports, favoring the forfeiture of such land grants, have been made to either branch of this Congress, until after final action shall be taken upon such bills *in Congress,* or until the Supreme Court of the United States, in a proper case shall decide upon the validity of such grant.

SEC. 2. That the Secretary aforesaid be, and is hereby, prohibited from certifying or patenting to any corporation any land grant except where such corporation has complied strictly with all the conditions of the granting act, and that in all cases of doubt in construing these conditions, the benefit of the doubt *shall* be given to the Government.

MR. OATES, from the Committee on the Public Lands, presented the following

VIEWS OF THE MINORITY.

We dissent from the report of the Committee on the Public Lands on joint resolutions No. 253, for the following reasons:

The first resolution, right enough in itself, prohibits the Secretary of the Interior from "taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where *reports* favoring the forfeiture of such land grants have been made to either branch of this Congress until after final action" is had thereon. This we favor, but the report goes the full length of prohibiting the said Secretary from such action upon the mere introduction of a bill for the forfeiture of any such grant. We are opposed to placing any such construction upon the said first resolution, of which it is not fairly susceptible, and is thus construed, then we are opposed to

the resolution itself, but not otherwise, because it might be made the means of doing the grossest injustice. It would place it within the power of a single member of Congress, by the mere introduction of a bill, to give vast annoyance and suspend the issuance of patents to a railroad company which was by every principle of law entitled to them. We should, however, not be surprised at this part of the report when in a preceding part of it the statement is made that no railroad company has been found which had complied with the conditions of its land grant in either the letter or spirit of the law. A bill was introduced six months ago, at the beginning of the present session to forfeit the lands granted to the Great Southern Railroad, running from Chattanooga, Tenn., through the State of Alabama to Meridian, Miss., a distance of about 300 miles. No action has been taken thereon by the committee, and the pendency of that bill retards the company in obtaining patents and selling their lands, notwithstanding they have the necessary certificates and proofs that the road was constructed and completed as required in the granting act —a compliance with the law both in the letter and the spirit. With this case in the hands of the committee, and a statement of these facts having been made in open session two months ago, it can scarcely be said to be a fair statement that none of the railroad companies have complied with the terms of their grant. We refer to this case as an illustration.

We also dissent from that part of the report wherein

it charges "an administrative officer" (we presume the executive officer at the head of the Interior Department is meant) with issuing patents to these corporations in violation or disregard of the law, because the reflection is unjust. The quotations from the last annual report of the Commissioner of the General Land Office show that the rulings of the Department touching land grants has been in strict accord with the decisions of the Supreme Court of the United States in Shulenburg *vs.* Harryman, in 21 Wallace, which was not a legislative decision. It did not make any fresh law, but was a faithful and able application of principles as old as the common law of England to the facts presented in that case. These old principles thus applied informed the Secretary of the Interior and everybody else who took pains to read and understand that time was not such an important or essential element in these railroad land grants, nearly every one of which are estates upon condition subsequent, as to defeat them without the act of the grantor when the road was not completed within the time mentioned in the granting act. After the expiration of the prescribed time within which the road was to have been completed by the terms of the grant the title still remained in the railroad company, and they may lawfully sell (or earn) the lands by the construction of the road, which is the purpose of the grant so long as the grantor (the Government) permits the company to proceed. See 2d Blackstone's Commentaries—estates on condition subsequent.

We cannot join in the recommendation for the

adoption of the second resolution, because the same prejudges every controversy arising out of land grants, including those now pending in this House and the Senate, wherein the committee are divided in opinion, and prohibits for all time the issuance of patents or certifying any lands granted to any corporation except where there has been a strict compliance with all the conditions of the granting act, and makes the Secretary of the Interior *the judge* to ascertain and determine when all of the conditions are performed. It is proposed to make this resolution retract or apply to a case wherein a company, acting under the law but out of time, constructed a road and become entitled to the lands coterminous, so as to defeat the lawful claim of such lands. It is thus an attempt to divest vested rights without due process of law. We care nothing more for railroad companies than for other citizens. We favor just and constitutional legislation for all classes.

The hope is expressed by the committee that the adoption of the resolutions will drive these corporations into the courts where the controversies growing out of land grants will at last have to be settled. If the committee are in earnest in this declaration that the courts will ultimately have to settle these matters, why, we respectfully ask, have not the committee proposed some general measure to expedite that course? Why retain jurisdiction of each particular case and perform great labor in undergoing the mockery of a legislative-politico semi-judicial trial in a committee room with identically the same verdict in every case, instead of perfecting a

measure and endeavoring to pass it, requiring the courts, as speedily as practicable, to adjudicate and settle them, if, as the committee say, they must all at last go there for settlement?

We presume that the object of the second resolution is to prevent or prohibit the Secretary of the Interior from issuing patents in any case where the United States as grantor may legally declare the land granted forfeited, but the resolution is so constructed as to defeat the very purpose of the committee in recommending its adoption. They no doubt intended to take away from the Secretary the right to certify or patent in any and every case where there was any ground of controversy, but instead of so doing the resolution leaves him still to judge whether there has been strict compliance with the granting act. In the Senate there has been a general law proposed, and every lawyer in the United States knows, or ought to know, that not one of "these wealthy corporations," as they are called in the report, can sue the United States, because the courts of the United States have no jurisdiction until there is a statute conferring jurisdiction touching these matters. The resolutions barricade every avenue of escape from the citadel and then set fire to it to force the garrison to come out and fight fairly.

We offer as a substitute for the resolutions Senate bill No. 1445.

WM. C. OATES.
V. S. VAN EATON.

A BILL to provide for the settlement of the rights of the States and of the corporations and persons interested in any grant of lands in aid of railroads and canals which shall be declared forfeited by act of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit courts of the United States shall have jurisdiction to hear and determine all questions and controversies that may arise between the United States and any person or corporation upon the declaration hereafter made by act of Congress that any grant of the public lands of the United States in aid of the construction or equipment of a railroad or other road or canal has been forfeited, and shall also have jurisdiction to determine whether any such declaration of forfeiture by such act of Congress is so made as to abridge, impair, or destroy the rights of any State, corporation, or person having vested rights, easements, or privileges under the acts of Congress making such grants.

SEC. 2. That when Congress has by law declared that any grant of lands referred to in the first section of this act is forfeited, it shall be the duty of the Attorney-General of the United States to exhibit and file a bill in equity in a circuit court of the United States in the judicial district in which the granted lands, or some part thereof, are located, in the name and in behalf of the United States of America, and against the persons or corporations claiming the benefits of such land grant, or

its successor, for the purpose of settling, according t
the true intent, purpose, and meaning of the laws of th
United States relating to such grant, all the legal an
equitable rights of the United States, and of suc
grantee, or its successors or assigns, to said lands, c
any part thereof, under such grant or to any right, eas
ment, or privilege thereto appertaining; and said circu
court shall have full and complete power and jurisdi
tion to adjudge, determine, and enforce, by appropriat
order or decree made in such suit, the said rights of th
United States, and those also of all persons or corpora
tions claiming or having any such right, easement, c
privilege against the United States under agreemen
with or conveyance from such grantee, or its successor
or of any person or corporation claiming or having suc
right, easement, or privilege adversely to such grante
or its successors, and against the United States. An
State whose rights are affected by the forfeiture of an
such grant of lands may file its petition in said caus
setting forth the facts upon which its claim is based, an
asking for such relief as shall be appropriate theret
which petition shall be answered by the Attorney-Ge
eral on the part of the United States; and upon th
hearing of such petition, on the pleading and proofs, th
court shall decide upon the merits of the claim as again
the United States so asserted by such State. And so, i
like manner, may any person or corporation propoun
its claim to any right, easement, or privilege in such fo
feited lands as against the United States, which sha
be answered, heard, and decided in like manner. A

any time during the progress of said case the court may order a consolidation of any of such petitions, so as to lessen the costs and facilitate the final disposition of the same.

SEC. 3. That upon the filing of such bill, and during the first term of the court thereafter, or in the vacation of such court, the court, or the judge of the circuit court in which such bill is filed, shall, upon application of the complainant, make an order, which shall be entered of record in such court, and shall be published as often as may be required for a term of sixty days from the date of such order, notifying all persons having any interest in the lands so declared forfeited to appear and propound their claims to the same, by petition, within the period of one year from the date of such order. Such order, with a brief statement of the allegations in the bill, shall be published in a newspaper, or in several newspapers, if the court or judge shall so direct, as near as may be to the said land grant in each State or Territory in which the same, or any part thereof, is situated. The publication of such order shall have the same effect upon all persons having any interest in said forfeited lands as if they were duly served with lawful process in said suit. And no claim for any interest in such lands shall be propounded in said case without special order of the court after the period of one year from the date of such order.

SEC. 4. That if any question shall arise upon the pleadings in such case as to the power of Congress to de-

clare a forfeiture of the lands covered by such grant, or as to the extent or manner of declaring such forfeiture, it shall be the duty of the circuit court to decide said question before proceeding to decide upon any other claim set up in said case, and, upon motion of any party interested therein, to certify the same, with so much of the record as shall be necessary to its proper understanding, to the Supreme Court of the United States, for its judgment thereon: *Provided,* That such motion is made during the term of the circuit court at which such decision is made. And the Supreme Court shall advance the hearing of said certified question so that the same may be decided with all convenient speed.

SEC. 5. That after a final decree is rendered in the circuit court of the United States upon any petition presented in such cause under the provisions of this act, if the amount involved in controversy in any petition, or in any class of consolidated petitions, is in excess of five thousand dollars, an appeal may be taken from such final decree to the Supreme Court of the United States, under the laws, rules, and regulations governing appeals in equity cases: *Provided,* That such appeal shall not be allowed after six months from the date of such final decree.

49TH CONGRESS, *vst Session.*

HOUSE OF REPRESENTATIVES.

REPORT No. 931.

FORFEITURE OF LANDS GRANTED TO CALIFORNIA AND OREGON RAILROAD.

MARCH 8, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. HENLEY, from the Committee on the Public Lands, submited the following

REPORT:

(To accompany bill H. R. 6659.)

The Committee on the Public Lands, to whom were referred sundry bills the forfeiture of the lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

There being no material change in the legal status or in the points presented in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Con-

gress, your committee hereby adopt and present as its own the report made by said committee in the Forty-eighth Congress.

The Committee on the Public Lands, to whom were referred sundry bills looking to the forfeiture of the railroad lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

Your committee have made careful examination of the facts presented them on behalf of the claimants of this land grant, the California and Oregon Railroad Company, and find substantially the facts in connection therewith to be as follows:

On the 25th day of July, 1866 (U. S. Stat., vol. 14, page 239), an act was passed by the Congress of the United States entitled "An act granting lands to aid in construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon." The grant was in the usual form, being a grant *in presenti*, with a condition subsequent annexed. Section 6 of said act required that the company should construct, within one year after the passage thereof, the first section of twenty miles of the said railroad, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and that the railroad

should be of the same gauge as the Central Pacific of California and be connected therewith. In order that the general scope and purpose of said act may be clearly understood, it is deemed best to set out the first section thereof *in extenso,* which reads as follows:

CHAPTER CCXLII.

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, organized under an act of the State of California, to protect certain parties in and to a railroad survey "to connect Portland, in Oregon, with Marysville, in California," approved April sixth, eighteen hundred and sixty-three, and such company organized under the laws of Oregon, as the legislature of said State shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad in California, in the manner following, to wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph line within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of Califor-

nia; and running thence northerly, through the Sacramento and Shasta Valleys, to the northern boundaries of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua, and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named company: *Provided,* That the company completing its respective part of the said railroad and telegraph line from either of the termini herein named to the line between California and Oregon, before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

Other provisions of the act are to the effect that the two companies mentioned therein, namely, the Oregon and California and the California and Oregon, should both be operated as one continuous line; and there are certain other provisions in the act relative to the transportation of mails of the United States, &c., which it is not material to the purposes of this report to particularly advert to. By a subsequent act, dated June 25, 1868, the time for the completion of this road, or the two roads,

was extended to 1880. The work of construction at both ends of the line of this road seems to have been begun within the time prescribed by the act or the amendment thereto, and to have been duly prosecuted within the allotted time, until the California portion, starting from the north point on the main line of the Central Pacific Railroad, not far from Sacramento, had reached Redding, a point 150½ miles northward, late in 1872. The road, up to this point, has been accepted by the Government, and patents to the company have been issued by the Government for all of the lands adjacent to the completed portions of the road and coterminous therewith, amounting in all to 1,537,919 acres. The Oregon portion had, in the mean while, been pushed southward, from the northward terminus at Portland, to Roseburg, a point 197 miles distant, leaving at the above stoppage, a gap of about 275 miles to be built, of which nearly equal parts belong to each of the undertaking companies.

It was stated to your committee, in reference to the Oregon portion of this road, that Ben. Holliday, a mail contractor, was president of the Oregon Company, and in 1872 it became hopelessly involved in debt, and that at the suit of the mortgage bondholders it was placed in the hands of a receiver. The California Company, which had, in the interval, become merged into and become a part of the Central Pacific, a corporation of abundant means, alleges that its operations were discontinued about the same time for the reason that without the prospect of a through connection, they had no motive or inducement to build to the State boundary,

the designated point of junction. The lands alone, it was alleged, were not a sufficient inducement, as they were chiefly broken and mountainous or infertile in character, and the work would be very costly and difficult, while the local traffic would be insignificant. The contention was that the principal value of the work remaining to be built lay in the formation of the through line; that one of the co-operating parties was insolvent, and the other, though financially able, would require the consent of the State of Oregon to build within that State, which consent, it was apprehended, there might be some difficulty in obtaining. In this condition of suspense the enterprise remained from 1873 to 1881, a period of eight years, not one mile of road being built, or any appropriation therefor, unless the running of several lines of survey and a rehabilitation of the finances of the Oregon Company can be called such.

It was not until the portion in Oregon had passed into the control of Mr. Henry Villard, who was also president of the Northern Pacific Railroad, that the actual extension of the contract was resumed, and the work, also, at the southern end recommenced. The gap has since been narrowed to about one-half by the construction of about 100 miles in Oregon and by the partial construction of some 20 miles in California; but it is asserted by the railroad companies that the latter is let to contract, and that the grading forces are at work at critical points, such as tunnels, rock-cuts, and fills, all along the line, with the expectation of making a

junction near the State boundary and opening the line through during 1886. It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great Northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa,* as well as open new mining fields and agricultural resources to the energies of the people.

Against the forfeiture of this act the railroad companies above named have made the following points in their argument: Their contention is, that the grant of land was made by Congress to these companies and to their assigns, for the purpose of affording a great public highway that would be available to the United States Government in time of war and for the transportation of freight and passengers, and thus develop and open up a section that now stands greatly in need of this character of communication; and they have laid great stress upon the title of the act, which is "An act grant-

ing land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon." Against the policy of forfeiture these companies have contended that section 5 of the act prescribing the conditions of the grant is definitive of the intention of the Government to bestow the grant upon these companies as a compensation for the construction of the road. They urge, since that was the purpose of Congress in granting these lands, that nothing has occurred since then which could reasonably, or should reasonably, induce the Government to withdraw its grant, even though it were authorized to do so by the technical terms and provisions of the act.

There does not seem to be any serious pretense on the part of the California and Oregon Company that Congress has not the legal right, if it thinks proper to exercise it, to declare a forfeiture of all of the lands included in this grant not coterminus with that portion of the road that was completed within the period of time prescribed by the act. So that the question becomes one of very great simplicity, and has been presented to your committee nakedly as an appeal to the sense of justice or the indulgence of Congress in view of all the circumstances of the case. It stands as if Congress were now asked to make a new and original grant. In answer to the points most insisted upon by the company, to wit, that it should not in reason have been called upon to continue the construction of its portion of the road while financial objections existed in reference to the other end, which seemed likely to defeat the con-

struction of that portion of it, your committee have simply this to say:

In the first section of the act of July 5, 1866, we find the following language employed:

"*Provided,* That the company building its respective part of the said railroad and telegraph from either termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State."

In the brief filed with your committee by Mr. Tweed, counsel for the California company, he expresses a doubt as to whether the consent of the State of Oregon could have been obtained to continue the construction of the road onward to the northern terminal point; and it is contended that since there was a substantial doubt as to whether Oregon would give such consent, it would have been imprudent in a business point of view for the California company to continue its construction with no reasonable probability of being met by the sister line coming from the north.

In order to test the sincerity of the point thus presented, it is of some profit to recur to the all-pervading wish existing in Oregon and throughout the West, at that time and ever since, for the construction of a railroad. It is not credited by your committee that if the California company had continued their construction

up to the Oregon line there would have been the slightest difficulty in obtaining the consent of the legislature of Oregon to continue the building of the road on northward to the terminal point, or until the portion of the road already built was reached.

Although not clearly proven to your committee, yet facts enough were brought before us to raise the suspicion that the resumption of the building of the road may mainly be attributed to a fear on the part of the Central Pacific that the Villard combination would build a road from Portland, over another route nearer to the coast, and thereby antagonize in some way the interests of the California company; and we think out of the agitation of that scheme a composition or agreement between the two parties was effected by which the building was resumed. One of the objects that has heretofore moved Congress in making these munificent and unparalleled donations of the public domain to railroad corporations has been to secure the early completion of these roads through sparsely inhabited portions of the country in order to settle up and develop the same. It has been a recognized fact that in many instances the necessities of the Government have required the construction of railways through regions which would not, without the aid of the Government subsidy, pay a fair remuneration upon the capital invested. And hence the donations of public land have simply been a method employed by the Government to pay companies to construct railways through countries where the traffic would not

pay interest upon the capital employed in the construction thereof.

When this land grant was made in 1866, and indeed for ten years thereafter, it may be assumed that no company would have constructed a railway without Government aid; and hence the California company built the road as far as Redding, as hereinbefore stated, for which they have received patents to lands amounting to over 1,300,000 acres, much thereof being land of great value. The remaining portion of the road to be constructed is through a mountainous country, presenting, as has been stated to your committee by the railroad companies' attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense; but the company now is in such condition that to render remunerative and available the other portions of the road already constructed they must build the road to the Oregon south line. Therefore, in viewing this matter it will be seen that the California company is simply and only in possession, as above stated, to appeal to the liberality or bounty of this Government, and in the consideration of this appeal it has been impossible for your committee to disembarrass itself from a knowledge of the antecedent history of the corporation that now owns and controls the California and Oregon Railroad, viz, the Central Pacific Railway Company.

One of the great overshadowing evils of this country unquestionably is the aggregation of colossal fortunes in

the hands of a few men. We all know from the contemporaneous history of this country that the Central Pacific has been the recipient of the lavish and even prodigal bounty of this Government. According to current representation it is a corporation whose power, audacity, and strength have left unvisited by its meretricious influence no department of the Government; whose power has stood omnipotent in Congressional and legislative lobbies; has waved the baton of authority in political conventions, dictated nominations, framed platforms, and voted its army of employes at elections to defeat the party or the man who had unhappily incurred its disfavor. With its enormous wealth wielding and commanding its myriad instrumentalities, it has assumed a potency in public affairs that renders any further bestowal of public bounty upon it, to say the least, inexpedient.

However these things may be, it is certain that whenever a corporation becomes so powerful as to challenge universal recognition of the fact that it is a potential factor in politics, the point is then reached when the public weal will be best consulted by depletion of its resources rather than by the concession of additional gratuity.

No doubt many of these representations have been exaggerated, but enough is absolutely known to warrant your committee in saying with entire confidence that, as a matter of bounty or of grace from this Government, the Central Pacific has received enough! Had it been made to appear to your committee that the further completion of the line were absolutely dependent

upon the forbearance of the Government it might present a question for our serious consideration whether as a matter of policy it would not be better to extend the time for the completion of this road and not forfeit the land grant; but the work has reached, as before stated, an advanced stage, and is understood to be in the hands of contractors, and will inevitably be completed, because to finish what remains unfinished utilizes the capital already invested, and to discontinue it involves a corresponding sacrifice.

It was further claimed that it would be grossly unfair and unjust to cut off the opportunity to receive these lands now that the whole work is on the eve of completion and the ground is covered with workmen, no faster progress in the situation being practicable. They urge that cost and difficulty are of the essence of the grant and not time.

In this connection they have stated to your committee, and it is undoubtedly true, that very few railroads in this country present anything like the topographical difficulties that lie upon this route. They allege that three successive high mountain ranges are to be crossed; some twenty tunnels in the whole gap, with as many important bridges, and much inevitable delay from snows, &c. These things were urged in support of the equitable plea for indulgence. The all-sufficient answer to this plea, aside from what has been urged hereinbefore, is that the Government cannot afford at this particular time to be indulgent or waive any advantage it may pos-

sess in the letter of its contract. These grants of lands were made upon the theory above adverted to. The law was plain that the road must be completed within a certain specified time. If this has not been done, then there has been a breach of the condition subsequent of which the other party will take advantage.

Upon the question as to whether or not the land grant is legally subject to forfeiture, as I have stated before, there is no serious contention. Nor indeed under the adjudications recognized as authority could there be.

The doctrine in support of the forfeiture has been discussed by your committee in all its phases, and from its constant recurrence in the consideration of these railroad grants almost *ad nauseam.*

It is tersely stated in Sheppard's "Touchstone" (p. 154) as follows:

"It is generally true that he that doth enter for a condition broken doth make the estate void *ab initio,* and that he shall be in of his first estate in the same course and manner as it was when he departed with the possession and at the time of the making of the condition. And hence it is that, if there be any charge or incumbrance on the lands, as if the lessee of land upon condition grant a rent charge out of the land or enter into a statute of recognizance and the conusee has the land in execution and this charge is after the condition is made, in this case when the condition is broken and the party doth re-enter he shall by relation avoid the rent, statute, and recognizanc, and hold the land freed

from them all."

The same doctrine is found in other authorities. Thus in Coke, Littleton, 202*a*, it is said broadly:

"He who enters for breach of condition regularly shall have the land of his first estate."

At 201a it is said:

"In these cases if the rent be not paid at such time or before such time limited and specified within the condition comprised in the indenture, then may the feoffer or his heirs enter into such lands or tenements and them in his former estate to have and to hold and the feoffee quite to ouste thereof."

This is the language of Littleton. Coke says:

"Regularly it is true he that entereth for a condition broken shall be seized in his first estate or of that estate which he had at the time of the estate made upon condition, but yet this fayleth in many cases."

Coke goes on to specify the cases in which it "fayleth." They are placed under the two heads of "impossibility" and "necessity," and have no application here.

Butler and Hargreaves, in their note to this passage, say:

"It may be further observed: 1st. That as the entry of the feoffer on the feoffee for a condition broken defeats the estate in which the condition was annexed, so *it defeats* all rights and incidents annexed to that estate, as dower, &c., and *all mesne incumbrances of the feoffee.*"

In the now familiar case of Schulenburg *vs.* Harriman (21 Wall., p. 44) the Supreme Court say:

"The provision that all lands remaining unsold after ten years should revert to the United States if the road be not then completed is no more than a provision that the grant shall be void if a condition subsequent be not performed; * * * that it is the settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee but the grantor or his heirs, or the successors of the grantor, if the grant proceed from an artificial person, and if they do not see fit to enforce a forfeiture on that ground the title remains unimpaired in the grantee.

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant that right must be asserted by entry or its equivalent; if the grant be a public one it must be asserted by judicial proceedings authorized by law; * * * or there must be some legislative assertion of ownership of property for breach of the condition, such as an act directing the possession and appropriation of the property or that it be offered for sale or settlement."

The "legislative assertion" above referred to will be the bill which your committee recommends favorably.

A glance at the political history of this country during the past decade impresses upon your committee the belief that the people of this country will not countenance any overindulgent treatment of these great railroad corporations. Besides, the United States is always held to

a strict compliance with its engagements, and a sound policy requires that the co-contractors should be held to a like strict fulfillment. The era of forbearance should now be brought to a close. Your committee therefore recommend for favorable action the bill which is herewith reported.

H. Rep. 931—2.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned members of the Committee on the Public Lands dissent from the views of the majority and refer to their views in minority report on H. R. 6658, which they here adopt, the facts and the law in each case being similar. They therefore offer the accompanying bill as a substitute for the bill proposed by the committee.

H. S. VAN EATON.
H. B. STRAIT.
ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from the Central Pacific Railroad, in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of land in aid of the construction of a railroad

from the Central Pacific Railroad, in California, to Portland, in Oregon, as applies to lands coterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be, and the same are hereby, repealed, and all such lands are hereby resumed as part of the public domain.

49TH CONGRESS,) (REPORT
1st *Session.*) (No. 930

HOUSE OF REPRESENTATIVES.

FORFEITURE OF LANDS GRANTED TO OREGON AND CALIFORNIA RAILROAD.

MARCH 8, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. HENLEY, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany bill H. R. 6658.)

The Committee on the Public Lands to whom were referred sundry bills for the forfeiture of the lands granted to the Oregon and California Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and hereby make the following report:

There being no material change in the legal status or in the points made in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Congress, your committee hereby adopt and present as their own the report made by said committee in the Forty-eighth Congress, as follows, to wit:

The Committee on the Public Lands, to whom were referred several bills for the forfeiture of the grant of public lands inuring to the Oregon and California Railroad Company, having had the same under consideration, beg leave to submit the following report:

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oreg., to the Central Pacific Railroad in California, conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was granted to the "California and Oregon Railroad Company," a corporation organized under the laws of that State. That portion within the limits of Oregon was conferred upon "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of 20 miles as fast as completed should be made by three commissioners to be appointed by the President, and that upon their report

that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous to such completed sections of 20 miles.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, including all its property and franchises.

Section 6 of the granting act required that the assent of the companies to its terms should be filed within a certain period, and, further, that the whole line of road should be completed on or before the 1st day of July, 1875. This period was subsequently extended by act of Congress of June 25, 1868 (15 Stat., 80), to the 1st day of July, 1880. Section 8 of the granting act provided:

"That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto, as provided in section 6 of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States."

The length of the entire road in Oregon, inuring to the said Oregon and California Company, as definitely located from Portland to the State line of California, is 360 miles. Prior to the said 1st day of July, 1880, the

company had completed 197 miles of road running south from Portland. Nine sections of the road, consisting of 197 miles, had been duly examined, reported as fully equipped, and patents ordered to be issued. Patents had, however, in fact been issued for only a small portion of the lands adjacent to the line so completed and equipped. The failure to issue these patents was not chargeable to any neglect or laches on the part of the company, but as your committee is informed by the General Land Office, solely on account of the pressure of business in that branch of the executive service.

At the expiration of the time prescribed by the granting act within which the entire road should have been constructed, there remained uncompleted 163 miles. Of the original amount granted for the entire line, 2,521,600 acres were adjacent to the constructed road, and 2,086,400 acres were adjacent to the portion of the line upon which no work whatever had been done.

The work of construction seems to have stopped in the latter part of 1867. For three or four years thereafter nothing was done. It is claimed that work was resumed in 1881. August 29, 1883, an additional section of 45 miles was accepted by the President, and it is claimed that since that date the work has been still further prosecuted.

Your committee are of the opinion that the grant should be declared forfeited by Congress for all that portion of the road not completed within the period prescribed.

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands *unpatented* at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidently be considered a mere ministerial act. To make it responsible for the neglect or the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company, at that date, had a vested right to patents. They are clearly of the opinion that it would be inequitable, in any event, to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

But your committee are also clearly of opinion that the grant should be forfeited for so much thereof as was coterminous with the uncompleted line on the 1st day of July, 1880.

The legal principles involved in reaching this conclusion are in substance the same as those heretofore discussed in various reports of this committee during the present session recommending forfeiture bills. A

repetition of that discussion here is deemed entirely unnecessary and superfluous.

The power to declare the forfeiture is undoubted (United States *vs.* Repentigny, 5 Wall., 211; Schulenburger *vs.* Harrison, 21 Wall., 44; Farnsworth *vs.* Minn. R. R. Co., 92 U. S., 66).

The fact of a part performance of the condition after breach is immaterial, for time is of the essence of the contract, and neither laches nor estoppel can be invoked against the Government (7 Otto, 584; 8 *Id.*, 489; Wheat., 720; 11 *Id.*, 184; 4 McLean, 567; 5 *Id.*, 183; 1 Pet., 318; 8 Wall., 269-274; 5 Otto, 316).

Mere indulgence or silence cannot be construed into a waiver of a breach of condition (Gray *vs.* Blanchard, 8 Peters, 284-292; Washburn, R. P., sec. 19).

Nor have your committee been able to find any equitable considerations demanding relaxation of the rule properly invoked to protect the interests of the Government in what remains of the public domain. The company stopped its work two years before the expiration of the period limited. No satisfactory or plausible reason therefor, consistent with the facts, has been shown to the committee.

When work was resumed it was after breach of condition. The company assumed all risks of forfeiture, and in the judgment of your committee it cannot now complain if the United States deems it proper to assert her rights in the premises.

Your committee accordingly report the accompany-

ing bill to the House with the recommendation that it be passed, the same being a substitute for several bills before the committee upon the subject.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following

VIEWS OF THE MINORITY:

The gap of about 125 miles in length between the California and Oregon and Oregon and California roads is, in our judgment, the line of land grant road which the Government and the people of the United States are now most interested in having constructed, and it is our clear conviction that the early closing of this gap and the consequent completion of the through railway line from Portland to San Francisco is so important to the interests of the Government and the people from a military as well as a commercial point of view, that Congress should refrain from placing any obstacles in the way of the speedy completion of the work.

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oregon, to the Central Pacific Railroad in California, "and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad," conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was to be con-

structed by the "California and Oregon Railroad Company," a corporation of that State, while the portion within the limits of Oregon was to be constructed by "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of twenty or more miles as fast as completed should be made by three commissioners to be appointed by the President, and that, upon their report that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous with such completed sections of road.

Section 5 provides that the—

Said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States, and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, with all its property and franchises.

The act of April 10, 1869 (16 Stat., 47), expressly provides that the lands granted "shall be sold to *actual settlers only* in quantities not greater than one-quarter section to one purchaser and for a price not exceeidng $2.50 per acre.

The purpose of the act under consideration was to secure a rail and telegraph connection between the Central Pacific Railroad in California and Portland in Oregon, a distance of more than 600 miles. Congress did not make the grant for the purpose of aiding the construction of local lines, covering only portions of this route. There was nothing in the character of the country or its situation or circumstances which would have suggested governmental aid for such a measure. The object to be secured was a through connection, or, as it is expressed in the seventh action of the act, "one connected and continuous line," from the railway system of California to the chief city of Oregon, thus securing connection between the great central and southern transcontinental systems of railway and Portland, Oreg.

This was all the more important in view of the possibility of war with a naval power, which, by its control of the seas, might cut off communication between San Francisco and Portland, and thereby prevent the dispatch of troops and munitions of war from one to the other, thus exposing the west coast to perils which might, to a great degree, be averted by direct and rapid interior rail communication between the two cities. It was for the purpose of securing this communication that the grant in question was made.

Even in the adverse report presented through Mr. Henley at the last Congress these principles are recognized in the following language:

It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and, of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa,* as well as open new mining fields and agricultural resources to the energies of the people.

The act designated the California and Oregon Railroad Company and such corporation organized under the laws of Oregon as the legislature of that State should appoint as the instrumentalities selected for the construction of the road. Neither company could build beyond the State line of its own State unless expressly authorized to do so by the legislature of the other State.

Construction was seasonably commenced on both roads, and would have been prosecuted to completion but for the general financial difficulties which so seriously

affected the Ben Halladay party, which was constructing the Oregon portion of the line, that it was compelled to succumb and stop work.

In this situation the Government could not have reasonably asked the California company to proceed with the further construction of their road. The California company had no power to build into the State of Oregon and complete the whole line. They could not have obtained the power from the Oregon legislature, which had designated another company to do the work. The California company could only build to the State line at a vast expense, through a mountainous country as difficult as the Sierra Nevadas, and when they had built there the country would have been no better off than before, for the desired intercommunication by rail between San Francisco and Portland would still be impossible.

The Oregon company was compelled to suspend work on account of the great financial depression which paralyzed all business interests at the time.

The California company was not in fault in suspending construction until there appeared to be a reasonable prospect that the Oregon portion of the road would be built.

As soon as this appeared the California company recommenced work, and it thereafter continued to prosecute it with the utmost diligence and rapidity until the Villard failures brought the construction of the Oregon division again to a halt.

The most difficult portions of the Oregon line are near the State boundary, and still remain to be constructed, while the California company is just in the midst of the difficult portions of its line north of Redding.

In the year 1884 reports of commissioners were filed showing the completion of two 20-mile sections of this difficult portion of the road in California, and these 40 miles were duly accepted by the President in February, 1885.

When the great Villard failures startled the country in 1884 and necessitated a second stoppage of the work upon the Oregon portion, it was apprehended that the inability of the Oregon company to obtain funds for continuing its work would for a long time, if not permanently, obstruct the completion of the line.

It is now understood, however, that arrangements have been recently made by those interested in the California portion of the road by which, unless hostile legislation should intervene, the completion of the line can doubtless now be secured.

The Committee of Public Lands, through Mr. Henley (who understands very well the topographical difficulties of the country to be traversed), said at the last Congress:

It is undoubtedly true that very few railroads in this country present anything like the topographical difficulties that lie upon this route.

The remaining portion of the road to be constructed is through a mountainous country, presenting, as has

been stated to your committee by the railroad company's attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense.

The Auditor of Railroad Accounts, in a report made January 26, 1881, says:

The country there is of such a mountainous character as to require heavy work and great expense; so much so that it is very doubtful if the road will ever be built.

The Railroad Commissioner, in his report for 1884, says, p. 39: "The uncompleted link involves much heavy and expensive work."

But we are assured and believe that the work will be completed, and that speedily, if Congress shall now withhold its hand from the forfeiture demanded by the majority.

The suspension of work which prevented the completion of the line within the prescribed time has been satisfactorily explained. But even if this were not so, if the excuse could be considered by any one to be in anywise inadequate or insufficient, we find ourselves now in a situation where we can have the road within a couple of years if we cast no stumbling block in the way; and when we count the cost of interference it is our unhesitating judgment that the Government of the United States cannot afford, at the expense of stopping the work, to attempt to forfeit the "earned" lands of this grant, by

which we mean lands coterminous with completed portions of said road, whether completed in or out of time.

It is difficult to understand how it can be seriously claimed that lands already earned can be retained by the Government because it happens that they are not yet patented to the companies.

On this very subject the Committee on the Public Lands of the last Congress, through Mr. Henley, said:

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands unpatented at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidenly be considered a mere ministerial act. To make it responsible for the neglect of the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company at that date had a vested right to patent. They are clearly of the opinion that it would be inequitable in any event to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

The correctness of the views thus expressed then, can harly be doubted now.

On the other hand, if we now permit the work to proceed the Government will secure (*a*) the much needed rail communication between Portland and the railway systems of California ; (*b*) the development of the country between Delta and Ashland so far as it is capable of developing; (*c*) the enhancement of the value of the Government lands along the line of the road; (*d*) the acquisition of the benefits which accrue to the Government from the conditions of the grant as prescribed in section 5, viz: The transportation of mails, the transmittance of dispatches, the preference in the use of railroad and telegraph, the maintenance of the railroad as a highway for the use of the Government of the United States free of all tolls or other charges upon the transportation of property or troops of the United States, and the acquisition of the right to have these transported over the road "at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States."

All these conditions are, of course, dependent upon the receipt by company of the granted and earned lands.

If the Government sees fit to declare a forfeiture of the earned lands, it annuls the conditions as well as the grant; it cannot retain the benefit of both the grant and the conditions.

Reflection upon this subject has led us to the con-

clusion that this case is an exceptional one, in which the interest and the duty of the Congress of the United States is clear; that it would fail of its duty in the protection of the northwest frontier and the Pacific coast if it took a step which should now imperil the completion of this line.

Already a large part of the Oregon line has been constructed; but the most difficult portion of the line, near the State boundary, still remains to be completed. On the California portion it has been necessary to run expensive tunnels and make costly rock cuts and extensive fills; and during the last four years over $2,000,000 has been expended upon the California portion alone—a sum sufficient to have constructed the whole line of that portion of the road but for the vast expense of constructing a railroad through the difficult passes of the Trinity and Shasta Mountains, through which the line has to run.

Finally, we are now in a situation in which if we stay our hands the whole of this most difficult and costly work, so essential to the Government and people of this country, and to its protection and integrity in case of war with Great Britain or any other naval power, will be completed.

It appears that not only is there no public demand from any quarter for the forfeiture advocated by the committee, but that on the contrary the Board of Trade of Sacramento and the Chamber of Commerce of San Francisco have strongly protested against it. Two hun-

dred and fifty business firms of Sacramento have united in the protest. The report made at the last Congress through Mr. Henley testified expressly to the "all pervading wish existing in Oregon and throughout the West" for the construction of the road. Every business interest in California and Oregon opposes a forfeiture; the most representative press in California, without distinction of party, concur in the demand that the grant should be left unimpaired; and both houses of the legislature of California have united in a joint resolution of instruction to their representatives against immediate forfeiture, and in favor of the continuance of the grant, in order that the important benefits to accrue from the construction of the road may be secured.

Under these circumstances it is our opinion that the bill reported by the majority of the committee ought not to become a law to the extent of forfeiting the lands simply because they are conterminus with portions of said road not built in time. In all similar cases we have steadily opposed a forfeiture or a resumption of the lands granted along the line of the road completed before any act of forfeiture on the part of the Government; these lands, we contend, are "earned," whether patented or not. We therefore present the accompanying bill as a substitute for that of the committee, and ask that it be printed.

H. S. VAN EATON.

H. B. STRAIT.

ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of lands in aid of the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California, as applies to lands conterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be and the same are hereby repealed, and all such lands are hereby resumed as part of the public domain.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. Dictrict Court.

DEFENDANTS' EXHIBIT 386

omitting certificate of County Clerk, is as follows:

9105

Deed Book 245, Page 438. Deed No. 2045.

Issued for contract No. 1705.

ORE. & CAL. R. R. CO.

TO

CITY OF PORTLAND.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California

Railroad Company, a corporation, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, WITNESSETH: That WHEREAS, the party of the first part did on the seventh day of November, A. D. 1882, by its Contract Numbered 1705, sell and agree to convey unto Almer E. Bowman the land hereinafter described, for the sum and price of Four Thousand Five Hundred and Seventy-nine 40/100 (4579-40/100) Dollars to be paid as in said contract, provided; and

WHEREAS, Said purchase price has been fully paid to the party of the first part, and said The City of Portland, as assignee of said Almer E. Bowman has thereby become entitled to a conveyance from the party of the first part of all of the right, title and interest which it, the party of the first part, has or may hereafter acquire from the United States in and to said land; and

WHEREAS, By the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July A. D. 1890, in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the

said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July A. D. 1887, which trust deed is duly recorded in the record of mortgages for said counties of Multnomah and Clackamas, in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands and that said Union Trust Company has no right, under the terms of said trust deed to, or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to the said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises, and of the payment to the party of the first part of the said sum of Four Thousand Five Hundred and Seventy-nine 40/100 (4579-40/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit:—

The South half of the South half and the Northeast quarter of the southeast quarter of section twenty-three (23) all of section twenty-seven (27) the north half of the northwest quarter, and the southeast quarter of the northwest quarter, the west half of the northeast quarter, and the southeast quarter of the northeast

quarter, the northeast quarter of the southwest quarter and the southeast quarter of section thirty-one (31) the east half of section thirty-three (33) all in Township One (1) south Range Five (5) east, also the north half of section nineteen (19) in township one (1) south range six (6) east; also the north half of section five (5) township two (2) south range five (5) east Willamette Meridian, containing according to the United States survey thereof, two thousand two hundred and thirty-four 70/100 (2234-70/100) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto, unto the said party of the second part, its successors and assigns forever, reserving however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the premises, and the right to take all water needed for operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof, as may be mineral lands, other than coal and iron. And the said party of the second part does hereby, for itself and its successors and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines between said premises and such right of way, a good lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has hereunto set ——— hand and seal, the day and year first above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,
By R. Koehler, 2nd Vice President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,
By Geo. H. Andrews, Secretary.

In Presence of:
David Loring, (CORPORATE SEAL)
F. G. Ewald.

STATE OF OREGON,
County of Multnomah.
ss.

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said county and state, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company, and Geo. H. Andrews, Secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company, both personally known to me to be the same individuals named and described in, and

who executed the said instrument and they severally acknowledged to me that he the said R. Koehler, as 2nd Vice President and he, the said Geo. H. Andrews, as Secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation, for the uses and purposes therein mentioned, and the said Geo. H. Andrews, being by me duly sworn, did depose and say that he is the Secretary of the Oregon and California Railroad Company, and resides at Portland, Multnomah County, Oregon; that he is the legal custodian of and is acquainted with and has in his possession, the corporate seal of said company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,
Notary Public for Oregon.

(NOTARIAL SEAL)

Rec'd for Record
Dec. 31st, 1897, at 10:50 a. m.
(Certificate of clerk not printed)

United States v. Oregon &
California R. R. Co. et al.
Defendants' Ex. 386.

Book 246 page 468
9104
O. C. R. R. to Portland
Deed No. 2046 Issued for Contract No. 1804

THIS INDENTURE made this third day of July, A. D. 1893, between the Oregon and California Railroad Company, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, Witnesseth:

That whereas the party of the first part did on the sixteenth day of February, A. D. 1883, by its contract numbered 1804 sell and agree to convey unto A. G. Cunningham the land herein after described for the sum and price of one thousand nine hundred and fifty-eight 82/100 (1958-82/100) Dollars to be paid as in said contract provided and whereas said purchase price has been fully paid to the party of the first part and said The City of Portland as assignee of said A. G. Cunningham has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest, which it the party of the first part, has or may hereafter acquire from the United States in and

to said land, and whereas, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July, A. . 1890 in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company a corporation incorporated under the laws of the State of New York were defendants and appeared in said suit, it was found, adjudged and decreed by said court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

Now Therefore, in consideration of the premises, and of the payment to the party of the first part of the said sum of one thousand nine hundred and fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is

hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The South half of the North East quarter and the South half of section twenty five (25) the north half of the North east quarter and the North west quarter of Section thirty five (35) all in Township one (1) South Range five (5) east; also the south half of section nineteen Township one (1) South, Range six (6) East Willamette Meridian, containing according to the United States survey thereof nine hundred and fifty five 52/-00 (955.52/100) acres be the same more or less.

To hold the said premises with the appurtenances thereto unto the said party of the second part, its successors and assigns forever reserving, however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the

boundary line or boundary lines between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set his hand and seal the day and year first above written. In presence of:

David Loring, The Oregon and California Railroad Company

F. G. Ewart

By R. Koehler, 2nd Vice-President.
The Oregon and California Railroad Company,

By GEO. H. ANDREWS, Secretary.

(Corporate seal) (Seal)

STATE OF OREGON,)
) ss.
County of Multnomah.)

Be it remembered, that on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, Secretary of said Com-

pany, whose names are subscribed to the foregoing instrument as 2nd vice-president and secretary of said company, both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler, as 2nd Vice President, and he the said Geo. H. Andrews as Secretary of the said Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of said Corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon, that he is the legal custodian of and acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,

(Notarial seal) Notary Public for Oregon.

Recd. for record Dec. 31st, 1897, at 10.50 A. M.

No. 9566

STATE OF OREGON)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to The City of Portland recorded in Book 246 page 468 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May, A. D. 1913.

JNO. B. COFFEY,
County Clerk.

DEFENDANTS' EXHIBIT 387

Is certified copy of stipulation in suit No. 2272, filed in the Circuit Court of the United States, Ninth Circuit, For the District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John W. Griggs, United States Attorney General, as attorney for complainant, and by Wm. F. Herrin, Wm. D. Fenton, and Wm. Singer, Jr. as attorneys for defendant, and filed October 31, 1893.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 388

is a certified copy of stipulation in case No. 2661, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt as Acting U. S. Attorney General, as attorneys for complainant, and Wm. D. Fenton and Wm. Singer, Jr., as attorneys for the defendants, filed October 6, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 389

is a certified copy of stipulation in case No. 2658, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt, Acting U. S. Attorney General, for complainant, and by Wm. D. Fenton and Wm. Singer, Jr., attorneys for defendant, filed December 8, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 390

is a certified copy of stipulation in case No. 2273, filed in the Circuit Court of the United States, Ninth Circuit, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by Joseph McKenna, Attorney General of the United States, by Charles J. Schnabel, Assistant U. S. Attorney for Oregon, Daniel R. Murphy, United States Attorney for Oregon, for complainant, and by Wm. D. Fenton and Wm. Singer Jr., attorneys for defendant, and Wm. F. Herrin, counsel for the defendant, filed September 1, 1897.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 391

is a certified copy of stipulation in case No. 2657, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by John H. Hall, Attorney for United States, and by Wm. D. Singer, Jr., and Wm. D. Fenton, Attorneys for Oregon and California Railroad Company, filed December 8, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 392

is a certified copy of stipulation in case No. 1936, filed in the Circuit Court of the United States, District of Oregon, in case of The United States, complainant, versus The Oregon and California Railroad Company and The Oregon Central Railroad Company, defendants, also The Oregon and California Railroad Company and The Oregon Central Railroad Company, complainants, versus The United States, defendant, signed by F. P. Mays, U. S. District Attorney for the United States, and by E. C. Bronaugh, L. L. McArthur and W. D. Fenton. Solicitors for the Railway Companies named, filed April 20, 1893.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 393

is a certified copy of a mortgage executed by Oregon & California Railroad Company to Faxton D. Atherton and Milton S. Latham, April 15, 1870, recorded April 16, 1870, in Book "C," page 745, Records of Mortgages of Multnomah county, Oregon, and thereafter, about the same time, in other counties in which any part of the Land Grant lands are situated, and is as follows:

This indenture made this fifteenth (15) day of April in the year of our Lord One Thousand eight hundred and Seventy between The Oregon and California Rail-

road Company a Body corporate created by and under an Act of the Legislature of the State of Oregon approved October Fourteenth A D 1862 entitled "an act providing for private incorporations and the appropriation of private property therefor" and the acts supplementary thereto and amenda-tory thereof party of the first part and Faxon D Atherton and Milton S Latham of the City and County of San Francisco State of California parties of the second part.

Witnesseth Whereas The said party of the first part is authorized and empowered in and by the several acts of the Legislature of the said State of Oregon above referred to, to borrow from time to time on the credit of the corporation and under such regulations and restrictions as the directors thereof may impose such sums of money as they may deem necessary for constructing and completing their railroad and to issue and dispose of bonds or promissory notes therefor to such an extent and in such denominations and bearing such rate of interest not exceeding twelve per cent per annum as the said Board of Directors may determine and also to issue bonds or promissory notes of such denominations as they may deem proper and at the rate of interest no exceeding twelve per cent per annum in payment of any debts or contracts for constructing and completing their railroad with its equipments and all else relative thereto and for the purpose of selling and disposing of the same in the money markets for the purpose of raising money to enable them to purchase materials for and aid them in constructing their railroad and telegraph and to secure the payments of such bonds or notes the said Com-

pany may Mortgage its Corporate Property and franchises.

And whereas for the purpose of providing the means for the construction of the said Rail Road and its equipment and completion the Board of Directors of said Oregon and California Railroad Company party of the first part herein have at a meeting of their Board of Directors duly and legally called and held at the office of their Company in the City of Portland State of Oregon on the Thirteenth (13th) day of April A. D. One Thousand eight hundred and seventy, Resolved in substance and legal effect that said Oregon and California Rail Road Company make, execute issue and deliver under its corporate seal its bonds bearing even date herewith severally payable to the holder thereof or bearer in gold coin of the United States at the banking house of Messrs. Dabney, Morgan and Company in the City of New York on the first day of April A D One thousand eight hundred and ninety-nine with interest from and after the first day of April in the year one Thousand eight hundred and seventy at the rate of seven per cent per annum payable at the same place semi-annually as follows:

Thirty thousand dollars per mile on each mile the whole line of its Rail Road constructed and to be constructed and no more. That is to say that Seven Thousand four hundred and fifty bonds of denominations of one thousand dollars each amounting to seven millions four hundred and fifty thousand dollars.

Six thousand Bonds of denomination Five Hundred dollars each amounting to three millions of Dollars and Five Thousand Bonds of the denomination of one hundred dollars each amounting to Five Hundred thousand dollars and such Bonds of the various denominations aforesaid amounting in the sum total of ten millions Nine hundred and fifty thousand dollars and no more are represented in all by eighteen Thousand four hundred and fifty bonds composed of the various denominations as aforesaid and that for the purpose of a more specific i-dentification thereof that said Eighteen Thousand four hundred and fifty bonds be numbered in a consecutive series from Number One to numbered eighteen thousand four hundred and fifty both inclusive commencing with those of denomination of one thousand dollars each and numbered respectively from number one to number seven thousand four hundred and fifty both inclusive. Secondly with those of denomination of five Hundred dollars each numbered respectively from numbered seven Thousand four hundred and fifty-one to numbered Thirteen Thousand four hundred and fifty both inclusive and lastly with those of denominations One Hundred dollars each numbered respectively from numbered Thirteen thousand four hundred and fifty one to number eighteen thousand four hundred and fifty both inclusive.

And whereas under and pursuant to lawful authority conferred by said several acts of the Legislature of the State of Oregon the said board of Directors of said Oregon and California Rail road further unanimously.

Resolved: In substance and legal effect that the President and Secretary of said Oregon and California Railroad Company executed and acknowledged in its name and on its behalf and under its corporate seal deliver to said Faxon D Atherton and Milton S Latham a Mortgage conveying assigning and transferring to him and them all its corporate, real and personal property franchises and effects, (save and except the lands and franchises granted to the Oregon Company by the Act of Congress approved July Twenty fifth A D One Thousand Eight Hundred and Sixty-six, entitled "And Acts to aid in the construction of a Railroad and telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" And acts supplemental thereto and amendatory thereof which lands and franchises are note to be included in this Mortgage but the same are to be conveyed by said Oregon and California Rail Road Company to Faxon D Atherton, Milton S Latham and Wm Norris as Trustees for the Bond Holders of the Party of the first part herein, the same to be disposed of with the consent of the party of the first part herein and proceeds thereof invested in United States Securities by such Trustees and shall constitute a sinking fund for the payment of the principal of the bonds herein before referred to, reference being had to a resolution of the Board of Directors of the party of the first part herein will more fully appear reference also being had to such deed of Trust executed contemporaneously herewith) as security for the payment of said eighteen thousand four hundred and fifty bonds as afore-

said towit: Seven thousand four hundred and fifty bonds denomination of one thousand dollars each. Six thousand bonds of denomination of Five Hundred Dollars each and five thousand bonds of denominations of one hundred dollars each, making in all ten Millions Nine Hundred and Fifty thousand Dollars as aforesaid and the interest to grow due thereon and that such mortgage should contain all the provisions covenants and conditions hereinafter set forth and that such mortgage and the whole of said Bonds thereby secured be severally dated the fifteenth (15th) day of April A D One thousand eight hundred and seventy.

Now therefore this indenture witnesseth: That the said Oregon and California Rail Road Company the party of the first part hereto under pursuant to and by virtue of the powers and authority conferred upon and vested in it by said several acts of the Legislature of the State of Oregon and under and pursuant to said resolutions duly passed and adopted by the aforesaid unanimous concurrence of its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purpose of effectually securing to the respective holders the payment of said Eighteen Thousand four hundred and fifty bonds with the interest which shall accrue thereon as aforesaid. And for and in consideration of the sum of One Dollar and other moneys lawful money of the United States of America to it in hand paid by said parties of the second part hereto at and before the ensealing and delivery of

these presents and receipt whereof is hereby acknowledged.

Hath granted bargained, sold assigned, transferred and set over and enеoffed, conveyed and confirmed and by these presents Doth grant, bargain, sell, assign, transfer and set over, enfeoff convey and confirm to the said Faxon D Atherton and Milton S Latham and the survivor of them their or his successors or assigns all and singular the Railroad of the said party of the first part hereto now constructed or hereafter to be constructed from a point at the City of Portland in the State of Oregon southerly through the willamette, Umpqua and Rogue River Valley to a point on the southern boundary of the State of Oregon on the California line and all future extensions and branches of said railroad.

Together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired or appropriated for the purpose of a right of way for a single or double track railroad and all the appurtenances thereunto belonging. It is expressly understood however that all the lands and franchises granted to the Oregon Company by an Act of Congress approved July twenty-fifth (25th) A D One Thousand eight hundred and sixty six entitled "an act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and acts supplementary thereto and amendatory thereof are expressly reserved by the party of the first part hereto and are

not included or intended to be included in this mortgage but all which lands and franchises shall be conveyed by the party of the first part hereto to Faxon D Atherton, Milton S Latham and William Norris of the City and County of San Francisco State of California in Trust for the benefi-t of the Bondholders of the Bonds aforesaid the same to be disposed of under the direction of the party of the first part hereto and the proceeds thereof invested by such Trustee in the United States Securities and shall constitute a sinking fund for the payment of the principal of the Bonds aforesaid all of which will more fully appear reference being had to such Trust Deed Executed contemporaneously herewith. With the exception aforesaid there is also included in this Mortgage in and for the Consideration aforesaid and there is hereby granted bargained sold, assigned, transferred and set over enfeoffed conveyed and confirmed by the said Oregon and California Railroad Company party of the first part hereto to the said Faxton D Atherton and Milton S Latham parties of the second part hereto all the hereinafter corporate property of the said Oregon and California Rail Road Company part of the first part hereto/ That is to say. All its lands acquired and appropriated or which hereafter shall be acquired and appropriated for Depots Engine Houses, Machine Shops. Work shops, superstructures, erections and fixtures and also all and singular the franchises rights, and privileges now owned and possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part:

And also all the rails bridges, ways, piers, depots engine houses, Car Houses, Station Houses Warehouses Machine Shops Erections, superstructures, fixtures, privileges franchises and rights of said party of the first part and all the lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party of the first part or which shall hereafter be owned by it; amd all and singular the locomotives passenger cars freight cars and all other cars, carriages, tools, machinery and equipments for said Rail road and now owned or which shall hereafter be owned or acquired by said party of the first part (save and except however the lands and franchises granted by the acts of Congress as aforesaid) And also all goods and chattels rolling stock of every kind and description now owned or which shall hereafter be owned by the said party of the first part and in any way relating to or appertaining or belonging to or connected with said Rail Road its extensions or branches or the running and operating the same together with all rents, issues income profits money rights, benefits and advantages derived or to be derived had or received therefor by said party of the first part in any way whatsoever.

To have and to hold the said premises and every part thereof unto the said parties of the second part the survivor of them their and his successor or successors forever upon the following trust nevertheless that is to say.

First. In case default shall be made in the payment of the interest in any of the said Bonds according to the tenor thereof or of the coupons or interest warrants thereto annexed or in the payment of the principal of any of the said Bonds when the same shall become due and shall be demanded and if any such default shall continue for the period of three months or in case of any default in any requirement hereof to be done or kept by the said Company and if any such default shall continue for the period of three months then and in either case the said parties of the second part the survivor of them their or his successors in the trust created or declared by this indenture either personally or by his or their attorney or agent may or upon due requisition as hereinafter provided shall enter into and upon all and singular the premises hereby conveyed or intended so to be and each and every part thereof and have hold and use the same operating by his or their superintendents managers or servants or other attorneys or agents the property of the said company and conducting the business thereof and exercising the franchises pertaining thereto and making from time to time all repairs and replacements and such useful alterations, additions and improvements thereto as may seem to him or them judicious and collecting and receiving all tolls, incomes, rents, issues and profits of the same and every part thereof and after deducting the expenses of the operating the said railroad property and all appertenances and of, conducting the business of the said railroad company and of all the said repairs and replacements alterations ad-

ditions and improvements and all payments which may be made for taxes, assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof as well as just compensation for their or his own services and for the services of such attorney or counsel as may have been by him or them employed shall apply the moneys arising as aforesaid to the payment of the interest on the Bonds secured here-by in order in which such interest shall have become or shall become due rateably to the persons holding the coupons evidencing the right to such interest and after paying all interest which shall have become due to apply the said moneys to the payment of the principal of the said Bonds secured hereby rateably to the persons holding such bonds and after the payment of the principal of all the bonds secured thereby if any surplus shall remain to pay over the said surplus to the party of the first part or dispose of the same as and Court of Competent Jurisdiction may order.

Second. In case any default shall be made as hereinbefore expressed and defined and shall continue as hereinbefore specified then and in any case the said parties of the second part and the survivor of them their or his *successors* in the trust created or declared by this indenture may or upon due requisition as hereinafter provided shall personally or by his attorney or agent sell and dispose of all and singular the premises hereby conveyed or intended so to be at Public Auction in the City of New York or at such other place as the said Trustees or the survivor of them their or his successor

may designate and at such time as they or he may appoint, having first given notice of the time and place of such sale by advertisment published not less than three times a week for six week in one or more newspapers to be designated by the said Trustee the survivor of them their or his successors or successor or to adjourn the sale from time to time in their or his discretion. And if so adjournment to make the same without further notice at the time and place to which the same be adjourned and to receive the Proceeds thereof and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the same which sale made as aforesaid and whether sybject to any lien or otherwise shall be a perpetual bar both in law and equity against the parties to these presents and all other persons claiming or to claim the said premises or any part thereof by from through or under them or any or either of them and after deducting from the proceeds of such sale just allowances for all expenses thereof including attorneys and counsel fees and all other expenses advances or liabilities which may have been made or incurred by the Trustees or the survivor of them their or his successors or successor in operating or maintaining the said rail road property or in managing the business of the said company while in their or his possession and in arranging for the completing the sale hereinbefore conveyed property and all payments which may have been made by them or him for taxes or assessments or other charges for the said property as well as compensation for their or his own services apply the said

proceeds to the payment of interest on the Bonds secured hereby in the order in which such interest shall have become due rateable to the person holding the coupons evidencing the right to such interest and after paying all interest that shall become due to apply the remaining proceeds of such sale as aforesaid to the payment of the principal of the bonds secured hereby rateably to the persons holding the said Bonds and after the payment of the principal of the Bonds secured hereby if any surplus, shall remain to pay over the said surplus to the party of the first part or to dispose of the same as any Court of Competent Jurisdiction may Direct.

And it is hereby declared that the receipt or receipts of the said Trustees the survivor of them, their or his successor or successors shall be sufficient discharge to the purchaser or purchasers of said premises for his or their purchase money and such purchaser or purchasers his or their heirs executors or administrators shall not after payment thereof and having such receipts be liable to see the application of such purchase money upon or for the trusts and purposes of these presents, or in any manner whatever be answerable for any loss misapplication or non-application of such purchase money or any part thereof or be obliged to enquire into the necessity or expediency of or authority for any such sale.

Third. At any sale of the aforesaid property or any part thereof made to enforce the lien created by these presents pursuant to the power herein granted or by

judicial authority the parties of the second part hereto as Trustees or the survivors of them, their or his successors or successor may bid for and purchase or cause to be bid for and purchased the property so sold on behalf of all the holders of the hereby secured Bonds then outstanding in the proportion of the respective interest of such holders provided that if all the property hereby conveyed to be sold as aforesaid the time at which the purchase herein authorized may be made shall not exceed the whole amount of the Bonds then outstanding with the interest accrued thereon in behalf of which the said purchase shall be made and if a portion of the said property shall be sold such price as shall in the judgement of the said Trustee the survivor of them their or his successor or successors be reasonable.

Fourth. In case default be made in payment of any half yearly interest or any of the Bonds hereby secured at the time and in the manner provided in the coupon or interest warrant therewith issued the said coupon having been presented and the payment of the interest thereon specified having been demanded and if such default shall continue for the period of three months after the said coupon shall have become due and payable then and thereupon the principal of all of said Bonds shall at the option of the Trustees the survivor of them his or their successor or successors become immediately due and payable but a majority in interest of the holders of the said Bonds may nevertheless in writing or by the vote of a meeting held pursuant to notice published daily for two weeks in a newspaper printed in the Cities of

New York and Philadelphia and before the interest in arrears shall be paid instruct the Trustees the survivor of them their or his successors or successor to declare the said principal to be due or waive the right so to, declare on such terms and conditions as the majority may deem proper or may annul or reserve the determination of the Trustees the Survivor of them, their or his successor or successors provided that no action of the Trustees the survivor of them their or his successor or successors or of the Bond holders shall extend to or be taken to affect any subsequent default or to impair the rights, resulting therefrom.

Fifth. The Trustees the survivor of them their or his successor or successors shall have full power in their discreation upon the request of a Majority of the Directors of the said company to convey by way of release or otherwise to ther person or persons designated in and by such written request any of the Bonds or property hereby conveyed or intended so to be acquired or held by the said company for the purposes of stations, mills, depots shops. or other buildings and shall also have power to convey as aforesaid on like request any land or property which in the judgement of the said Trustees or the survivor or them herein named or their or his successor shall not be necessary for use in connection with the said property or which may be held by the said Company for a supply of fuel water, clay, timber or other materials and also to convey as aforesaid on like request any lands not occupied by said Company or which may become disused by reason of a change of

location of any depot shop or other buildings connected with the business or operations of the said company. And such lands occupied by the said company and adjacent to such buildings or building as the Director of the said corporation or a majority of them may deem it expedient to disuse or abondon by reason of such change and to consent to any such change and to such other changes in the locations of any and all such mills, depots, shops or other buildings as in their judgement shall have become expedient and to make and deliver the conveyance necessary or proper to carry the same into effect; But any lands which may be required for permanent use in substitution for any so released shall be conveyed to the Trustees hereinbefore named the survivor of them their or his successor or successors upon the trust expressed defined, created or declared by these presents unless the Directors of the said Company shall at the time communicating such requests as aforesaid to the Trustees of the Bond holders hereby constituted or the survivor of them their or his successor or successors or thereafter and prior to the completion of such sale present and deliver up to such last named Trustee or the survivor of them, their or his successor or successors for cancellation such a number of the Bonds hereby secured as shall be equal at the par value thereof to the price or consideration money for which such property shall be released or conveyed as aforesaid in which case the said last named Trustees or the survivor or them their or his successor or successors shall release or convey the same upon such written, request as aforesaid and shall cancel

and destroy the Bonds so delivered up and surrendered by the proceeds of all lands released as aforesaid except as last hereinbefore provided shall be paid over to the Trustees the survivor of them, their or his successor or successors to be applied by them or him to the purchase of Bonds of the said Company in open market but the said Company shall have full power to dispose of according to their discretion such portions of the equipments, machinery and implements at any time held or acquired for the use of the said Company and to facilitate its operations as may have become unfit for such use and to replace the same by new anything hereinbefore contained to the contrary notwithstanding.

Sixth: Upon a default in the payment of the interest or principal of the Bonds hereby secured or in the performance of any of the covenants herein contained upon a requisition in writing signed by a holder or holders of a majority of the said Bonds and a proper indentification by the said holders to the Trustees or the survivor of them, their or his successor or successors against the cost and expense to be by them or him incurred it shall be the duty of the Trustees or the survivor of them their or his successor or successors the right of the Bondholders and these presents by entry sale or suits at law or in equity as being advised by counsel learned in the law they or he shall deem most expedient for the interest of all holders of said Bonds subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, to in-

struct the said trustees or the survivor of them their or his successor or successors to waive such default provided that no action of the said Trustees or the survivor of them or their or his successor or successors or Bondholders or both in waiving such default or otherwise shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

And it is mutually agreed by and between the parties hereto that the said Trustees or either of them or the survivor of them or any successor or successors in such office may resign or discharge themselves or himself of the trust created or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect or such shorter time as they may accept as adequate;

NOTICE

That the said Trustees or either of them or their or his successor or successors may be removed in and by a requisition declaration or instrument in writing under the hands and seals of a majority in interest of the holders of the aforesaid Bonds duly executed acknowledged and attested that a successor or successors to such trustees or Trustee shall be appointed with the consent of the holders for the time being of a majority in interest of said Bonds then outstanding and the Trustee or Trustees so appointed shall thereupon become vested with all the powers authorities and estate reserved by granted to or conferred upon the parties of the second part by these presents and all the rights and interests requisite

to enable them or him to execute the purposes of this trust without any further assurance or conveyance by or on the part of the said Company so far as such effect may be lawful and upon the death, resignation or removal of any Trustee or any appointment in his place in pursuance of these presents all his powers and authorities by virtue hereof shall cease and all the estate, right, title and interest in and to the said premises of any Trustee so dying resigning, or being removed shall wholly cease and determine.

And the said party of the first part for itself and its successors in consideration of the premises covenants and agrees to and with the parties of the second part or the survivor of them their or his successor or successors in the trust hereby created or declared that the said party of the first part and its successors shall and will at all times hereafter keep open an office or agency in the City of New York for the payment of the principal and interest of and upon the Bonds hereinbefore recited and described and hereby secured, as the same shall become payable and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and demand of payment of all and every of the Bonds and coupons aforesaid which may become payable during the continuance of such default.

And it is hereby agreed between the parties to this indenture that in the Mean time and until default shall be made in the payment of the interest or principal of

the said Bonds or of some of them or of some part thereof or in some of the covenants or agreements herein contained to be kept observed or fulfilled by the said party of the first part it shall be lawful for the said party of the first part and its successors peaceable and quietly to have hold use possess and enjoy the said premises with the appurtenances and to receive the incomes tolls rents issues and profits thereof to its own use and benefit without any hindrance or interruption suit or disturbance whatsoever of or by the said parties of the second part or their or his successor or successors in the trust or any other person whatever lawfully claiming or to claim the same by from or under them or any of them.

And the said party of the first part and its successors and all and every other person or persons whatsoever lawfully or equitably claiming any estate right, title or interest of in and to the hereinbefore granted premises by from, or under or in trust for it shall and will at any time or times hereinafter upon the reasonable request and at the proper cost and charges in the law of the said parties of the second part or the survivor of them or their or his successor or successors or assigns make do and execute or cause or procure to be made done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said parties of the second part as by the said parties of the second part or the survivor of them their or his

successor or successors or their Counsel learned in the law shall be reasonably devised advised or required.

And also that the said party of the first part and its successors the above granted, bargained, sold and assigned premises and every part and parcel thereof with the appurtenances unto the said parties of the second part or the survivor of them or their or his successors or successor against the said party of the first part and its successors against the said part of the first part and its successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by through or under it shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part has caused its Corporate seal to be affixed to these presents and the same to be signed, by its President and Secretary by resolution of the Board of Directors thereof at the City of Portland State of Oregon this fifteenth day of April in the year of our Lord One Thousand Eight Hundred and Seventy.

(Seal) BEN HOLLADAY,

In the presence of President of the Oregon and California Rail Road Company

John H. Mitchell A. G. CUNNINGHAM,

Secretary of the Oregon and California railroad Company

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this fifteenth day of April in the year of our Lord One thousand eight hundred and seventy before me the undersigned a Notary Public in and for said County of Multnomah and State of Oregon duly commissioned sworn and fully qualified personally appeared the above named Ben Holladay President of the Oregon and California Rail Road Company whose names are subscribed to the foregoing instrument as parties thereto personally known to me to be the individuals described in and who executed the said instrument and they severally acknowledged to me that he the said Ben Holladay as President of the Oregon and California Rail Road Company and he the said A. G. Cunningham as Secretary of the said Oregon and California Railroad Company executed the same as and for the Act and Deed of the said Oregon and California Rail Road Company freely and voluntarily and for the uses and purposes therein mentioned and the said A. G. Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Rail Road Company and resides at the City of Portland Multnomah County in the State of Oregon; that he is the legal custodian of and is acquainted with the corporate seal of said Company that the seal affixed to the within Mortgage is such corporate seal: that the same was so affixed by him as Secretary of said Company on the fifteenth day of April one thousand eight hundred and

seventy by order of the Board of Directors of said Company and that he signed his name as Secretary to said Mortgage by the like order of said Board of Directors.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal the day and year first above written.

(Notarial Seal) Geo. W. Murray
(U. S. Rev Stamp 5 cents cancelled) Notary Public.

State of Oregon)
) ss
County of Multnomah)

I, A. G. Cunningham Secretary of the Oregon and California Rail road Company do hereby certify that each bond which this mortgage is given to secure has placed upon it the requisite U S Internal Revenue Stamps as required by law that all of such Bonds in the aggregate have thereon U S Revenue Stamps to the amount of Fourteen Thousand Seven Hundred and Ninety five Dollars all of which are duly cancelled.

(Seal O & C R R Co) A G Cunningham
Secretary of the Oregon and California
Railroad Company

(United States Revenue Stamp 5 cents cancelled)

State of Oregon)
) ss
Department of State)

I, Samuel E. May Secretary of the State of Oregon do hereby certify that Geo W Murray whose name is

subscribed to the foregoing and annexed certificate of acknowledgment to Mortgage was at the time of signing the same "towit" on the fifteenth day of April A D One Thousand Eight Hundred and Seventy a duly commissioned qualified and acting Notary Public in and for the County of Multnomah in said State of Oregon and that he was then by the laws of the State of Oregon duly authorized and empowered to take and certify under his Notarial seal acknowledgements to Deeds of Conveyances and Mortgages and that full faith and credit are due to his official acts as such.

Witness my hand and the great seal of the State at office in the City of Salem State of Oregon this nineteenth day of April in the year of our Lord One Thousand Eight Hundred and Seventy.

(Great Seal State of Oregon) Saml E May
Secretary of State.

(United States Revenue Stamp 5 cents cancelled)
Received for Record April 16th, 1870 10 minutes before 8 o'clock P M.

STATE OF OREGON,)
) ss No. 9563
County of Multnomah)

I, JOHN B. COFFEY, County Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon & California Railroad Company to Faxon D. Atherton, et al. recorded in Book "C" page

745 Record of Mortgages has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

JNO. B. COFFEY, County Clerk.

DEFENDANTS' EXHIBIT 394

is a certified copy of a mortgage executed by The Oregon Central Railroad Company to Milton S. Latham, and Faxon D. Atherton, of date July 15, 1871, recorded October 14, 1871, at page 132 of Book "E", Records of Mortgages, and about the same time in each of the counties in which any part of the said Land Grant lands described therein was situated, which, omitting certificate of acknowledgment and certificate of Secretary of Oregon Central Railroad Company that each of the bonds secured by said mortgage had thereon the requisite United States Internal Revenue stamps, and that such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps in the amount of $4,395.00, is as follows:

This indenture made this fifteenth day of July in the year of our Lord One Thousand Eight Hundred and Seventy one between The Oregon Central Rail-Road Company a Body Corporate created by and under the Acts of The Legislature of the State of Oregon in that behalf made and provided party of the first part

and Milton S Latham and Faxon D Atherton of the City and County of San Francisco State of California parties of the second part.

Witnesseth: Whereas the said party of the first part in expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon and the Act of Congress of the United States approved May 4th, 1870 and entitled An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon "to borrow money for the objects and purposes in said Acts and each of them specified and for such authorized objects and purposes said party of the first part is desirous of borrowing a sum not to exceed Four Millions Three Hundred and Ninety-five Thousand Dollars and of securing payment of its corporate bonds or obligations issued or negotiated therefor by a mortgage or deed of trust to said parties of the second part as trustees as hereinafter set forth and provided. And whereas under and pursuant to the lawful authority conferred by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States aforesaid. the Board of Directors of the said party of the first part have unaminously resolved in substance and legal effect, that said Oregon Central Railroad Company make, execute issue and deliver under its Corporate seal its Corporate Bond bearing even date herewith severally payable to the holder thereof at the Banking House of Messrs. Dabney Morgan and Company in the City of New York State of New York on the fif-

teenth day of July 1891, with interest from and after July 15" 1871 at the rate pf seven per centum per annum payable at the same Banks semi-annually principal; and interest payable in gold coin as follows—that is to say: That twenty-nine Hundred and thirty (2930) of said bonds be made or issued for the sum of One Thousand Dollars each and that twenty nine Hundred and thirty (2930) of said bonds be made or issued for five hundred Dollars each in all five thousand eight hundred and sixty (5860) bonds in the aggregate amounting to Four Million Three hundred and Ninety-five Thousand Dollars and no more and that for the purpose of a more specific identification thereof said five thousand eight hundred and sixty (5860) bonds be numbered in a consecutive series from one to five thousand eight hundred and sixty both inclusive commencing with those of denominations of one thousand dollars and numbering them from one to two thousand nine hundred and thirty (2930) both inclusive and secondly with those of the denomination of five hundred dollars each and numbering them respectively from number two thousand nine hundred and thirty one to number five thousand eight hundred and sixty (5860) and that upon the face of each bond be printed or engraved a certificate signed by the parties of the second part thereto to the effect that such bond is one of the five thousand eight hundred and sixty bonds intended to be secured by these presents/ And whereas said Board of Directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part by the

Acts aforesaid in substance and legal effect. that the President and Secretary of said party of the first part execute and acknowledge in its name and in its behalf and under its corporate seal and deliver to said parties of the second part hereto a mortgage or deed of trust conveying assigning and transferring to them in trust all its corporate real and personal property road depots stations, side tracks, wood years, franchises and effects as security for the payment of said (5860) five thousand eight hundred and sixty bonds and the interest to grow due thereon and that such mortgage or deed of trust should contain all and singular the covenants provisos and conditions hereinafter set forth and that said mortgage and deed of trust and the five thousand eight hundred and sixty bonds thereby secured be severally dated the 15th day of July one thousand eight hundred and seventy-one.

And whereas the Congress of the United States of America did by an Act approved May 4th in the year of our Lord One Thousand eight Hundred and Seventy and entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" grant to the Oregon Central Rail Raod Company and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from the adjacent public lands the material for constructing said road also necessary lands for depots stations side tracks and the needful uses in operating the road not

exceeding forty acres in any one place and also each alternate section of the public lands not mineral excepting coal and iron lands designated by the odd numbers nearest said road to the amount of ten such alternate sections per mile on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of said Act and in case the quantity of ten full sections per mile could not be found on each side of said raod within the limits of twenty miles other lands could be selected under the directions of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such defficiency.

And whereas the said Oregon Central Rail Raod Company party of the first part hereto in and by the terms of said Act of Congress of the United States of America approved May 4th 1870 is required to appropriate and set apart by mortgage or deed of trust to two or more trustees all the net proceeds of the sale of the said granted lands as a sinking fund to be kept invested in the Bonds of the United States or other safe and more productive Securities for the Purchase from time to time and the redemption at maturity of the first mortgage construction bonds of the Company on the road depots stations side tracks and wood, yards not exceeding thirty thousand dollars a mile of the Rail road payable in gold coin not longer than thirty years from date with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum—no

part of tht principal or interest of said fund to be applied to any other use, until said bonds shall have been purchased or redeemed. or cancelled and each of the said first Mortgage Construction Bonds to bear the certificate of the trustees setting forth the manner in which the same is secured and its payment provided for.

Now therefore this Indenture Witnesseth That the said Oregon Central Railroad Company the party of the first part hereto under pursuant to and by virtue of the express power and authority conferred upon, and vested in it by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States of America aforesaid and under and pursuant to Resolutions duly passes and adopted by its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purposes and with the intent of better and more effectually securing the payment of said five thousand and eight hundred and sixty bonds with the interest due and to grow due thereon and for and in consideration of one dollar and other moneys, lawful money of the United States of America by the said parties of the second part hereto in hand fully and truly paid to the said party of the first part hereto before the unsealing and delivering of these presents the receipt whereof is hereby acknowledged hath granted, bargained, sold assigned transferred and set over enfeoffed, conveyed and confirmed and by these presents doth grant, bargain, sell, assigns transfer and set over enfeoff convey and con-

firm to the said Milton S Latham and Faxon D Atherton the said parties of the second part, as Trustees and in trust and to the survivor of them and to their or his successors or successor. all and singular the Railroad of the said party of the first part heretofore constructed or hereafter to be constructed from Portland to Astoria and from a suitable point or junction near Forest Grove to the Yamhill river near McMinnville in the State of Oregon in all a distance of one hundred and forty-six and one-half miles. thirty thousand dollars of said bonds being issued to each mile thereof together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired and appropriated for the purpose of a right of way for its Railroad and all the appurtenances thereunto belonging.

And also all its lands acquired and appropriated or which shall hereafter be acquired and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America approved May 4th 1870 and entitled " An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and also its depots. engine house, car houses, station houses warehouses machine shops. work shops, superstructures, erections and fixtures and also all and singular the franchises rights and privileges now owned possessed or acquired or which shall hereafter be owned by said party of the first part and all lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party

of the first part or which shall hereafter be owned by it and also all and singular the locomotives tenders passenger cars freight cars and all other cars, carriages tools machinery and equipments for said Railroad and now owned or which shall hereafter be owned or acquired by said party of the first part and also all goods and chattels now owned or which shall hereafter be owned by said party of the first part and in any way relating or appertaining or belonging to or connected with said Railroad or running or operating the same together with all rents, issues income profits moneys rights benefits and advantages derived or to be derived had or received therefrom by said party of the first part in any way whatsoever.

To have and to Hold all and singular the premises rights, franchises, property real and personal hereinbefore and hereby assigned mortgaged pledged and conveyed or intended so to be and everypart and parcel thereof with all the appertenances unto the same belonging or in any wise appertaining unto them the said Milton S Latham and Faxon D Atherton the said parties of the second part hereto and to the survivor of them and to their or to his successors or successor and to their and his assigns in trust for the person or persons firm or firms, bodies politic or corporate who have heretofore or who shall hereafter at any time become the purchasersor holders or owner of any or either of said five thousand eight hundred and sixty bonds amounting in the aggregate to four million three hundred and ninety-five thousand dollars to-wit: $80,000 per mile on said Railroad and no more subject to the terms

provisos and stipulations in said Five Thousand eight hundred and Sixty bonds contained and subject also to the provisions of the Act of Congress of the United States of America affecting or relating to or binding upon the party of the first part and also subject to the possession and management of said Railroad and property of said party of the first part and its successors or assigns so long as no default shall be made in the payment of either the interest or principal of said Five Thousand Eight Hundred and Sixty bonds or in or to either of them and so long as the party of the first part shall well and truly observe keep and perform all and singular the covenants agreements conditions and stipulations in said Five Thousand Eight Hundred and Sixty bonds and in this Indenture contained and set forth and which are to be observed kept and performed by and on the part of the said party of the first part.

And the said Oregon Central Railroad Company the party of the first part hath covenanted and agreed and by these presents doth for itself and its successors and assigns covenant and agree with the parties of the second part hereto and the Survivor and survivors of them and their and his successors and successor in manner and form following that is to say;

First. That said Oregon Central Railroad Company the party of the first part and its successors shall and will pay or cause to be paid all taxes, charges rates, levies and assessments imposed assessed or levied or which may hereafter be imposed assessed or levied upon

the premises franchises and property hereby mortgaged conveyed and assigned or intended so to be and shall and will at its own proper cost expense and charges do or cause to be done all acts and things necessary and proper to be done or performed in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises hereby created or intended so to be. And further that the lien or incumbrance created by the execution and delivery of this Indenture constitute and is in fact the first valid lien and incumbrance on the premises property and franchise therein described.

Second. That said Oregon Central Railroad Company the party of the first part and its successors shall and will at any time or times hereafter and from time to time execute, acknowledge and deliver under its corporate seal to the said parties of the second part and the survivors of them and their and his successors or successor, such other and further assurances deeds mortgages, obligations transfers indenture and instruments in writing and shall and will do and perform all such further or other acts or things as shall or may be proper or necessary or as their or his counsel learned in the law shall deem necessary proper or expedient for the better or more effectually securing the payment of said Five Thousand Eight Hundred and Sixty bonds and the interest due or to grow due thereon or for carrying into effect the true intent design objects and purposes of these presents or making preserving continuing and keeping valid and effectual, the lien and incumbrance

created or intended to be created by the execution de-livery and recording of this Indenture upon all the property real and personal rolling stock equipments franchises and effects and especially the lands referred to in and by the said Act of Congress approved May 4th 1870 now owned possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part.

Thirdly. And for the purpose of fully and more affectually securing the payment of the said Five Thousand Eight Hundred and Sixty bonds together with the interest due or to grow due thereon the said Oregon Central Railroad Company the party of the first part hereto for itself its successors hath pledged and hereby doth irrevocably pledge for the purposes and objects hereinbefore specified to and with the said parties of the second part and the survivors and survivor of them their and his successors and successor all and singular the net proceeds of the sales of the Lands granted to the party of the first part by the Act of Congree approvied May 4" 1870 hereinbefore mentioned as a sinking fund to be kept invested by the parties of the second part in the Bonds of the United State or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the party of the first part hereinbefore particulary described and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled.

And in the event that the principal of said First Mortgage Construction Bonds is not otherwise paid at the maturity thereof then the fund aforesaid which shall then have accrued from the proceeds of the sales of said lands and interest thereon shall be by said trustees parties of the second part or the survivor of them their or his successors or successor applied to the discharge and payment of any and all amounts both principal and interest then remaining due and unpaid on all such bonds and if such funds shall then be inssufficient to discharge the whole amount then due on all such bonds the same shall then be applied rateably thereon according to the interest respectively of all such bondholders.

And it is further stipulated and agreed between the parties hereto that it there remains any deficit in the payment of the principal and interest due on said Five Thousand Eight Hundred and Sixty bonds after the whole of the funds aforesaid shall be applied thereon at the maturity thereof then the trustees parties of the second part hereto their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undesposed of, which are included in the grant made by the Act of Congress aforesaid and which are hereby conveyed and intended to be conveyed in whole or in part as the said trustees may deem best for the interest of said bondholders and as may be prescribed or limited by any Act of Congress in force at the time of such sale and if there shall be no such prescription and limitation by law then said lands shall only be sold at public auction in the City of Port-

land in the State of Oregon to the highest bidder and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland State aforesaid and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance either principal or interest then remaining unpaid on such bonds aforesaid or any of them.

And it is hereby expressly covenant agreed and understood by and between the parties to these presents that notwithstanding the execution and delivery of these presents and of the covenants herein contained the said Oregon Central Railroad Company the party of the first part hereto shall have the right at any time after the execution of these presents to make sales of all and singular the lands granted to said Company by Act of Congree of the United States approved May 4, 1870 aforesaid in the manner and mode prescribed therefor by law and that the parties of the second part shall and will at any time after the delivery to them of this Indenture upon the request of the party of the first part and upon the receipt by the parties of the second part from the party of the first part of the price or consideration for said lands provided in and by said Act of Congress aforesaid make execute and deliver such releases discharges and assurances in respect to the lands for which they shall have received Consideration provided by law as the party of the first part or its counsel learned in the law may require for the purpose of making good

and sufficient title to said granted lands so sold to any and all purchasers thereof clear and free from all lien or incumbrance created by these presents and all net proceeds from the sales of all or any of the lands granted or intended to be granted by said Act of Congress shall be received and held jointly by the parties of the second part and the President of the party of the first part and shall be held subject to their control and shall be immediately and as soon as practicable after the same are received invested by said parties of the second part by and with the consent of the President of the party of the first part in United States Bonds or other more productive securities which securities shall be under the control of the parties of the second part and the said President of the party of the first part and shall be used solely in the Purchase from time to time and the redemption at maturity of said Five Thousand Eight Hundred and Sixty bonds and it is expressly understood and agreed that the lien created by this Indenture on said lands granted by said Act of Congress shall upon the sale of any portion of said lands as aforesaid and the payment of the purchase price thereof to the said parties of the second part cease so far as the same relates to the portion of the lands so sold. The said parties of the second part shall not have the right to make sale of any of said lands without the consent of the party of the first part.

Fourthly. That the said Oregon Central Railroad Company the party of the first part hereunto shall and will well and truly pay the said sums of money in said

Five Thousand Eight Hundred and Sixty bonds mentioned together with the semi-annual interest due or to become due thereon at the rate of seven per cent per annum at the times in the manner and at the place specified therein; and further said Oregon Central Railroad Company hereby covenants and agrees that in case it shall have for the space of thirty days made default in the payment of the semi-annual interest due or to become due on either or any of the said Five Thousand Eight Hundred and Sixty bonds or in case it shall fail to appropriate and set apart in the hands of the said parties of the second part all and singular the net proceeds of the sales of the said lands granted to the party of the first part by the Act of Congree of the United States as aforesaid as and for a sinking fund for and to be applied in payment or redemption of said Five Thousand Eight Hundred and Sixty bonds in the manner hereinbefore and in said Act of Congress specified then and in either of said cases after the lapse of said thirty days the whole principal sum mentioned in each and all of said Five Thousand Eight Hundred and Sixty bonds shall forthwith be and become due and payable and the lien or incumbrance hereby created for the security and payment thereof may be at once enforced anything in said bonds or in this Indenture to the contrary notwithstanding and that it shall and may be lawful and the said parties of the second part and the survivors or survivor of them and their or his successors or successor are hereby expressly authorized and empowered upon the request in writing of any two or more

holders of any of said Five Thousand Eight Hundred and Sixty bonds to enter into and upon and take actual possession of all and singular the railroad premises franchises, rights, property real and personal and effects hereby granted conveyed, assigned mortgaged pledged, transferred and set over or intended so to be as a security for the payment of said Five Thousand Eight Hundred and Sixty bonds and by themselves or their agents to take colect and receive the tools earnings income and profits thereof and every part thereof or to be derived therefrom and that they, said parties of the second part and the survivors and survivor of them and their and his successors and successor shall and may proceed and are hereby expressly authorized and empowered thereupon but within such reasonable time as they may deem proper not less than sixty days and upon and after public notice by advertisement for at least six weeks in one or more newspapers published in the cities of New York State of New York and San Francisco State of California and Portland State of Oregon. to proceed and sell at public auction in said city of Portland to the highest bider as well all and singular the said railroad rights and franchises as all other the property real and personal and premises hereby granted conveyed assigned mortgages pledged transferred and set over, or intended so to be, and all benefit and equity or redemption whatsoever of the said Oregon Central Rail Road Company the said party of the first part hereto of in and to the same and every part and parcel thereof together with the benefit of the franchise be-

longing to or connected therewith. Amd as the attorney or attorneys of the said Oregon Central Rail Road Company the said party of the first part hereto for that purpose by these presents duly appointed and constituted the said parties of the second part and the survivors and survivor of them and their and his successors and successor shall have full power and authority to make, execute and deliver to the purchasers thereof a good valid and sufficient deed or deeds conveyance or conveyances assignment or transfer in fee simple or otherwise of said Railroad lands tenements and real estate and of all and singular the said personal or other property rights and premises hereby granted assigned transferred or conveyed as aforesaid, which sale so to be made as aforesaid and which deeds, conveyances assignments and transfers so to be made and delivered as aforesaid shall operate to convey assign, transfer and vest in said purchaser or purchasers all the rights title, interest and estate whatsoever reversionary or otherwise of the said Oregon Central Rail Road Company the party of the first part of in and to the premises so sold conveyed assigned or transferred and which said sale so to be made shall be a complete and perpetual bar both at law and in equity against the said Oregon Central Rail Road Company the party of the first part its successors and assigns and all persons or parties claiming by from or under it or them in anywise or manner whatsoever. and that out of the moneys or proceeds arising either from said tolls, earnings or receipts of said Railroad or premises or at or from said sale so

to be made as aforesaid after first deducting the expenses disbursements costs, charges and counsel fees in and about the conducting of said sale or running and operating said Railroad that they the said parties of the second part and the survivors and survivor of them their and his successors or successor shall pay said five thousand eight hundred and sixty bonds or so many as shall be then outstanding and unpaid together with all arrears of interest then due or owing upon the same rendering or paying over the surplus of all such moneys if any there shall be to the said party of the first part hereto its successors or assigns.

This Indenture further witnesseth: and these presents are upon the express condition that upon payment in full of said Five Thousand Eight Hundred and Sixty bonds and the interest due thereon then these presents and the estate hereby granted shall cease and be void and the Oregon Central Rail Road Company the party of the first part shall be immediately and fully reinvested with the said premises hereby granted in law and in fact without any entry or other act whatever and that until default shall be made by said party of the first part hereto either in payment of said Five Thousand Eight Hundred and Sixty bonds or in payment of the interest due or to grow due thereon as aforesaid or in appropriating and setting apart in the hands of the parties of the second part their successors or successor all and singular the net proceeds of the sales of said lands, granted by the Act of Congree aforesaid as a sinking fund to be kept invested in Bonds of the United

States or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the Construction of the Company hereinbefore mentioned and described or in keeping and observing any of the covenants and agreements hereinbefore contained the said Oregon Central Railroad Company the party of the first part and its successors and assigns shall remain in the quiet and peaceful possession and enjoyment of the said premises and property hereby granted or conveyed or intended so to be as aforesaid.

This Indenture further witnesseth; and it is hereby expressly agreed that in case of the death resignation incapacity or inability of any or either of the parties of the second part to act in the execution of any of the trusts aforesaid, then it shall and may be lawful and the remaining acting surviving or competent Trustee or Trustees and the President for the time being of the said party of the first part are hereby empowered to select and appoint by an instrument in writing under their hands and seals which shall be recorded in the same office where this Indenture shall be recorded one or more competent persons to fill the vacancy or vacancies so created in the manner aforesaid and that such person or persons so appointed trustee or trustees shall have and possess and be vested with the same rights and powers as a trustee or trustees as he or they would have had and possessed or been vested with had he or they been originally made a party or parties of the second part to this Indenture and shall perform the same duties

in all respects and until such appointment shall be so made in the manner aforesaid and notwithstanding any vacancy or vacancies as aforesaid said remaining surviving acting or competent trustee shall have full power and authority to execute each and all the trusts hereby created and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same acts has been done and performed by all the parties hereto of the second part. and in case said appointment shall be made in the manner aforesaid party of the first part hereby covenants to make, execute and deliver all such other or further instruments deeds, Indenture or assurances as may be necessary to enable the person or persons so appointed to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same—if originally made a party or parties of the second part to this Indenture.

In witness whereof the said Oregon Central Railroad Company the party of the first part hereto hath caused these presents to be subscribed by its President and attested by its Secretary and hath under the express authority of the Resolution of its Board of Directors caused its corporate seal to be hereunto affixed and the parties hereto of the second part for the purposes of signifying their acceptance of the trusts herein and hereby created have hereunto subscribed their names and affixed their respective seals; All done the day and year first above written.

(Signed) Ben Holladay

President of the Oregon Central Rail Road Company
R H Towler

Secretary of the Oregon Central Rail Road Company
(Corporate Seal)

Milton S Latham (Seal)
F D Atherton (Seal)
Trustees.

Sealed and delivered in presence of
A G Cunningham
E A Cunningham

County of Multnomah)
) ss
State of Oregon)

Be it remembered that on this fifteenth day of July A D One Thousand Eight Hundred and Seventy One before me the undersigned a Notary Public in and for the said county of Multnomah and State of Oregon duly commissioned and qualified personally came Ben Holladay President of the Oregon Central Rail Road Company and R H Towler Secretary of the Oregon Central Railroad Company whose names are subscribed to the foregoing mortgage or deed of trust as parties thereto and as the President and Secretary of said Oregon Central Railroad Company both personally known to me to be the individuals named and described in and who executed the said mortgage or deed of trust and they severally acknowledged to me that he the said Ben Holladay as President of the said Oregon Central Railroad Company and he the said R H Towler as secre-

tary of the said Oregon Central Railroad Company executed the foregoing mortgage or deed of trust as and for the fact and deed of the said Oregon Central Railroad Company freely and voluntarily for the uses and purposes therein mentioned and he the said R H Towler being by me duly sworn did depose and say that he is the secretary of the said Oregon Cenral Rail Road Company and resides in the City of Portland Multnomah County in the State of Oregon that he is the legal custodian of and has in his possession and and is acquainted with the corporate seal of the said Oregon Central Rail-Road Company. That the seal affixed to the within and foregoing mortgage or deed of trust is such corporate seal That the same was affixed by him as Secretary of said Company on the fifteenth day of July A D One Thousand eight hundred and Seventy-one by order of the Board of Directors of said Company and that he signed his name as secretary thereto by the like order of the said Board of Directors.

In witness whereof I have hereunto subscribed my name and affixed my Notarial seal the day and year above first written at the City of Portland Multnomah County State of Oregon.

(Notarial Seal) (Signed) Andrew J Moses

Notary Public in and for the County of Multnomah State of Oregon.

U S Int. Rev. Stamp
05c Cancelled

State of Oregon)
) ss
County of Multnomah)

I, R H Towler Secretary of the Oregon Central Railroad Company do hereby certify that each of the Five Thousand eight hundred and Sixty bonds which this mortgage or trust deed is given to secure has placed upon it the requisite United States Internal Revenue Stamps as required by law. That such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps to the amount of Four Thousand three hundred and Ninety-five dol-- lars.

Witness my hand and the seal of said corporation.

(Corporate Seal) (Signed) R H Towler

U S Int. Rev. Stamp 05c cancelled

Secretary of the Oregon Central Railroad Company

State of Oregon)
) ss
Department of State)

I S F Chadwick, Secretary of the State of the State of Oregon do hereby certify that Andrew J Moses whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said mortgage or deed of trust was at the time of taking such acknowledgment and signing such certificate towit: on the fifteenth day of July A D One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah and

State of Oregon and that he then was by the laws of the State of Oregon duly authorized and empowered to take and certify under his notarial seal, acknowledgments of deeds or conveyances and mortgages and deeds of trusts and his signature to such certificate is genuine also his notarial seal and that full faith and credit are due to his official acts as such.

Witness my hand and the great seal of the State at my office in the City of Salem State of Oregon this fifteenth day of July A D One Thousand Eight Hundred and Seventy-one.

(Great Seal of State of Oregon)

U S Int Rev. Stamp (Signed) S F Chadwick

05c cancelled Secretary of State of Oregon.

United States of America)
) ss
City and County of San Francisco)

I, F J Thibault a Commissioner for the State of Oregon duly commissioned and qualified under and by virtue of the Laws thereof residing in the City and County of San Francisco and State of California do certify that on the fifteenth day of August A D One thousand eight Hundred and Seventy-one before me personally appeared Milton S Latham and Faxon D Atherton Trustees personally known to me to be the individuals described in and who executed the foregoing Instrument. And they the said Faxin D Atherton and Milton S Latham duly acknowledged to me that they

executed the said Instrument fully and voluntarily as such trustees for the uses and purposes therein mentioned and that the same was their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal as such commissioner at my office in the City and County of San Francisco and State of California this Fifteenth day of August A D One Thousand Eight Hundred and Seventy-one.

(Commissioners Seal) (Signed) F J Thibault
Commissioner for Oregon in California.

Received for Record October 14th, 1871.

STATE OF OREGON,)
) ss No. 9553
County of Multnomah)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon Central R. R. Co. to M. S. Latham, et al., recorded in Book E page 132 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1918.

(Seal) JNO. B. COFFEY, County Clerk.

DEFENDANTS' EHXIBIT 395

is a certified copy of a mortgage, bearing date January 1, 1881, between the Oregon and California Railroad Company, party of the first part, and Richard Koehler and Heinrich Hohenemser, of the second part, and others, recorded February 28, 1881, in Book "X," page 346, in the Records of Mortgages, Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of the granted lands described therein is situated, and said exhibit is as follows:

United States v. Oregon &
California R. R. Co. et al.
Defendants' Ex. 395

Page 346, Book "X."

The Oregon and California Railroad Co with Klaas Van Oterendorp, Philip N Lilienthal and others.

This indenture Made this first day of January in the years One Thousand eight hundred and eighty-one between the Oregon and California Railroad Company a corporation organized and existing under the laws of Oregon and hereinafter called the Company of the first part. Richard Koehler of Portland in Oregon and Heinrich Hohenemser of Frankfort on the Main in Germany Trustees as hereinafter mentioned of the second part. The said Richard Koehler and Heinrich Hohenemser Trustees as hereinafter mentioned of the third part. The said Richard Koehler and Heinrich Hohen-

emser and Philip B Bonn Paul Reinganum, Herman Koehler Ludwig Gruenebaum and Carl Pollitz all of Frankfort aforesaid. Adolph Otto of Heilbron in Germany and Michael Benjamin of Munich in Germany a committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act on behalf of said bondholders by their association of the fourth part and Klaas Van Oterendorp and Philip N Lilienthal of the City and County of San Francisco in California hereinafter called the Trustees of the fifth part.

Whereas said Oregon and California Railroad Company by resolution of its Board of Directors approved by resolution of a general meeting of its Stockholders and in pursuance of its Articles of Incorporation and By-Laws and with consent of the holders of the now existing First Mortgage Bonds of said Company as hereinafter set forth has resolved to make an issue of New First Mortgage Bonds as hereinafter described to the amount of Two Million (2,000,000) Dollars in gold or the equivalent in German Money in order to provide for the payment of a portion of its present indebtedness and to raise money by the sale of such bonds for the general purpose of the Company and to secure the payment of said Bonds and the interest thereon in the manner herein provided.

And whereas by an indenture dated the 15th day of April 1870 said Oregon and California Railroad Company mortgaged to Faxon D Atherton and Milton S

Latham all its Railroad from Portland to the boundary line of the States of Oregon and California then built or thereafter to be built with its equipment and appurtenances to secure an issue of 18450 First mortgage Bonds amounting in all to the sum of ten million Nine Hundred and fifty thousand dollars ($10,950,000) and interest thereon evidenced by interest warrants or coupons thereto annexed which Bonds have been negotiated and are still due with large arrears of interest and are now represented and controlled by said Heinrich Hohenemser and others parties hereto of the fourth part except about thirty two thousand eight hundred dollars ($32,800) in amount thereof supposed to have been lost or accidentally destroyed and except thirty thousand seven hundred dollars ($30700) in amount thereof which have been acquired by the sinking fund hereinafter mentioned.

And whereas said Richard Koehler and Heinrich Hohenemser have succeeded said Latham and Atherton as trustees of said Mortgage and are now the Trustees thereof.

And whereas; by another Indenture also dated the 15th day of April 1870 said Company granted and conveyed to said Milton S Latham and Faxon D Atherton and William Norris all the lands granted by the United States to aid in the construction of its said Railroad upon Trusts for sale of such lands and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of the bonds secured by the indenture of Mortgage lastly mentioned.

And whereas Said Richard Koehler Heinrich Hohenemser and Charles Edward Bretherton have succeeded said Lathem Atherton and Norris and the said Richard Koehler and Heinrich Hohenemser are now Trustees of said Indenture of Trust and of the sinking fund thereby created the said Bretherton having resigned and delegated the said trust to the two remaining trustees to-wit: Said Richard Koehler and Heinrich Hohenemser and such resignation having been duly accepted.

And whereas. said Heinrich Hohenemser and others the said Committee parties hereto of the fourth part being desirous that the said issue of new First Mortgage Bonds of the said Oregon and California Company should be made for the purpose aforesaid have requested the said Richard Koehler and Heinrich Hohenemser as Trustees of said two Indentures dated April 15th 1870 to join in and execute these presents for the purpose of postponing the lien of said Indentures of Mortgage and Trust dated the 15th day of April 1870 to the lien or charge intended to be created by these presents which Richard Koehler and Heinrich Hohenemser have agreed to do upon said Heinrich Hohenemser and others Committees as aforesaid parties hereto of the fourth part. testifying their request and consent thereto by executing these presents and causing the bonds and coupons or interest warrants held by them to be stamped with a notice of such postponement in the form hereinafter set forth.

And whereas there has been stamped by the order of

said Heinrich Hohenemser and others Committee as aforesaid parties hereto of the fourth part, upon each of the bonds controlled and represented by them a certificate in the following form.

This is to certify that by an indenture of Mortgage and Trust made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal to secure an issue of New First Mortgage Bonds and dated the 1st day of January 1881 the liens of the mortgage and Deed of Trust securing the within bond have been by the consent and at the request of the undersigned, representatives and controllers of the said Bond postponed to the lien or charge created by said indenture of the Mortgage and Trust to said Klaas Van Oterendorp and Philip N Lilienthal dated this 1st day of January 1881.

Heinrich Hohenemser
Philipp B Bonn
Paul Reinganum
Herman Koehler
Richard Koehler
Adolph Otto
Michael Benjamin
Ludwig Gruenebaum
Carl Pollitz

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds being duly authorized thereto by the association of such bondholders.

And upon each of the coupons or interest warrants there has been stamped by the like order and direction a memorandum in the following form.

"Subject to prior lien of New First Mortgage Bonds." And whereas said Bonds intended to be secured by these presents and to be known as new First Mortgage Bonds of the Oregon and California Railroad Company together with the warrants for interest thereon and the certificate of said Trustees thereupon have been prepared and bear even date herewith and are two thousand five hundred (2500) in number whereof fifteen hundred (1500) are for one thousand dollars ($1000) or four thousand two hundred and fifty (4250) mark and are numbered one (1) to fifteen hundred (1500) inclusive and one thousand (1000) are for five hundred dollars ($500) or two thousand one hundred and twenty five (2125) mark numbered fifteen hundred and one (1501) to twenty five hundred (2500) inclusive and which bonds and interest warrants are in the following form except that in those for five hundred dollars ($500) the amounts of principal and interest are varied accordingly.

United State of America, State of Oregon.

New First Mortgage Bond Oregon and California Railroad Company of Portland Oregon.

Interest six per cent per annum Principal and interest payable in gold coin in New York or Frankfort A M. Principal repayable by a sinking fund of one per cent per annum.

$1000 No M4250

The Oregon and California Railroad Company for value received hereby promises to pay to the bearer on the 1st day of January 1919 either the sum of one thousand dollars ($1000) in American gold coin at the financial agency of the Company in New York or the sum of Four thousand two hundred and fifty (4250) mark in money of the German Empire at the financial agency of the Company in Frankfort A M in Germany at the option of the bearer and to pay in the meantime interest thereon at the rate of six per cent per annum half yearly on the first days of July and January in each year the first of said payments being for all interest accruing to the 1st day of July next from the date hereof and the remaining payments being at the option of the bearer for each half year either thirty dollars (30) in American gold coin payable at the financial agency of the Company in the city of New York or one hundred and twenty seven and fifty-one hundredths (127.50) mark payable at the financial agency of the Company in Frankfort A M free of all taxes in the United States either State or Federal but only upon presentation and surrender as they mature of the seventy six interest warrants annexed.

This bond is one of two thousand five hundred Bonds of like form and date and numbered one to twenty five hundred (2500) inclusive whereof one thousand five hundred (1500) are for one thousand dollars ($1000) or four thousand two hundred and fifty (4250) mark

and one thousand (1000) are for five hundred dollars ($500) or two thousand one hundred and twenty five (2125) mark secured by an indenture of Mortgage of even date herewith made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal and recorded in the office of the County Clerk of Multnomah County in Oregon and in all other counties in which any part of the property therein comprised is situated whereby the said Company has conveyed to said Klaas Van Oterendorp and Philip N Lilienthal all its railroads between East Portland and Roseburg and Portland and Corvallis in the State of Oregon embracing the railroads heretofore known as the Oregon and California Railroads running between East Portland and Roseburg and being in length 198 miles or thereabouts The Oregon Central Railroad running between Portland and St Joseph and being in length 47 miles or thereabouts and the Western Oregon Railroad Running between St. Joseph and Corvallis and being in length 50 miles or thereabouts being in all 295 miles long and thereabouts together with all the rollong stock right of ways, depots, warehouse and dock and other property appurtenant to said railroad and described in said Mortgage and the lands granted by the United State in aid of the construction of such railroads and not yet sold or disposed of estimated to amount to one million and a half (1,500,000) acres as a First Mortgage on said Railroad and rolling stock and a Mortgage on said warehouse and dock property and upon so much of said lands as may be unsold at the time

of any enforcement thereof to secure the payment of said two thousand five hundred (2500) Bonds and interest thereon.

And said Oregon and California Railroad Company further promises to pay forthwith upon demand the amount of this Bond as aforesaid in case said Oregon and California Railroad Company shall fail for six calendar months to pay any interest warrant or any of said two thousand five hundred (2500) bonds when the same becomes due or shall fail to pay to said Klaas Van Oterendorp and Philip N Lilienthal or the trustees for the time being of said Indenture of Mortgage on the 1st day of July 1885 and on every 1st day of July thereafter so long as any of said Bonds shall remain unpaid the sum of twenty thousand Dollars ($20,000) in American gold coin at the office of the Company in the city of New York as a sinking fund to be thereafter applied together with interest on any Bonds therefore belonging to said sinking fund for the equal benefit of all said Bonds by redemption of such therof as shall be dreawn by lot or the previous 1st day of April at the financial agency of the Company in New York by said Trustees or one of them or their duly authorized agent in the presence of a Notary Public and such default in payment of interest warrants or sinking fund payment shall not have been waived by a majority in amount of the holders of the Bonds then outstanding in manner in said indenture of Mortgage provided.

The number of the bonds so drawn shall be pub-

lished by notice posted up in the financial agencies of the Company in New York and Frankfort A M and by an advertisement in Seven Newspapers of general circulation published respectively in New York, London, Amsterdam, Frankfort Munich Berlin and Basle and on publication of such notice the principal of the Bonds so drawn shall become payable on the first day of July then next and said bonds so drawn shall bear no interest after that date unless in presentation thereof at the financial agency of the Company in New York or Frankfort A M payment of said bonds or any interest then due thereon shall be refused.

The Company reserves the right of making larger payments to such sinking fund and of paying off on any 1st day of July (notice being given as aforesaid on or before the first day of April previous) the whole of the outstanding bonds.

This bond is not valid unless authenticated by the execution by the Mortgage Trustees of the certificate endorsed hereon.

The company may but shall not be obliged to require proof of the ownership of any interest Warrant before paying the same and the payment thereof to the person presenting the same shall in any case fully discharge the Company.

In witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary the 1st day of January 1881 Each of said Bonds being duly so

signed sealed and attested.

Form of Interest Warrant.

$30. M 127 .50/100

Interest warrant No one due July 1st, 1881 on New First Mortgage Bond of the Oregon and California Railroad Company No 1 for $1,000 (unless said bond shall have been previously redeemed and being either thirty dollars ($30) in American Gold Coin payable free of all taxes in the United States or Federal at the financial agency of the Company in New York or one hundred and twenty seven mark fifty pfennings payable at the financial agency of the company in Frankfort A M in money of the German Empire.

A G CUNNINGHAM

Treasurer

Form of Trustees Certificate.

We hereby certify that the within bond is one of two thousand five hundred (2500) bonds and no more of the Oregon and California Railroad Company secured by the within mentioned Indenture of Mortgage dated January 1, 1881 and made by said Oregon and California Railroad Company to us as Trustees.

K Van Oterendorp)
)
P N Litienthal)Trustees

And whereas; by reason of the lapse of time the date of the execution of this Indenture of Mortgage and

Trust Deed is subsequent to the day of which it bears date yet nevertheless this indenture of Mortgage and Trust Deed in the Indenture of Mortgage referred to in the Bonds hereinbefore mentioned, the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the Indenture of Mortgage and trust deed securing and intended to secure said Bonds as in said Bonds is mentioned and recited.

Now this indenture witnesseth: That in pursuance of said resolutions and to secure the punctual payment of said Bonds and the interest thereon said Oregon and California Railroad Company doth hereby grant, bargain, sell, assigns transfer and convey unto said Klaas Van Oterendorp and Philip N Lilienthan their heirs, assigns and legal successors as trustees of these presents all and singular the railroad lines of said Oregon and California Railroad Company now constructed and in operation between East Portland and Roseburg and between Portland and Corvallis in the State of Oregon including the railroads heretofore known as the Oregon Central and Western Oregon Railroads in all about two hundred and ninety five (295) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas Washington Yamhill, Polk and Benton in said state together with the ferry, ferry boats and landings connecting the same at Portland and East Portland and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated

for the purpose of the right of way of said Railroad or for grounds for side tracks depots, warehouses tanks, round houses, stock y-ards or any other Railroad purposes and all lands heretofore granted by the United States in aid of the construction of the said Railroads between the termini aforesaid and not yet sold estimated to be in amount about one and a half million of acres and intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes ties timber iron switches frogs depots, warehouses round houses, machine shops bridges trestle work and all other buildings or structures belonging to or used for the Maintenance or operation of said Railroads including all the offices docks and warehouses of said Company in Portland and East Portland and all locomotives, cars and other rolling, stock railroad supplies fuel tools and machinery now used in the maintenance or operation of said railroads and which rollong stock is more particularly described and enumerated in the schedule thereof annexed hereto and all other appurtenanves of said railroad between the termini aforesaid and the franchise, to operate the same and all the income earnings and profits of said Railroads and lands and all the rights, claims estate and interest of said Oregon and California Railroad Company therein and thereto.

To have and to hold the said railroads with their respective rolling stock equipment and appurtenances and the lands and other premises as above described unto the use of said Klaas Van Oterendorp and Philip

N Lilienthal their heirs, assigns and legal successors as trustees of these presents as joint tenant in common free from all prior liens and encumbrances whatsoever save and except a balance of purchase money due upon part of the dock and warehouse property of the Company in Portland and East Portland amounting to about forty thousand, ($40,000) dollars and a sum of seventy thousand ($70,000) dollars or therabouts and interest due to the European and Oregon Land Company and payable out of the net earnings of the lands granted by the United States to aid in the construction of the railroad between East Portland and Roseburg in trust nevertheless for the equal benefit and security pro rata of every holder of any of said, two thousand five hundred (2500) Bonds intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiations and for the uses and purposes and with all the rights and powers and subject to the provisions, agreements, covenants and stipulations contained in the following articles:

Article 1.

The said Oregon and California Railroad Company hereby covenants with said Klaas Van Oterendorp and Philip N Lilienthal that it will pay all taxes assessed against said Railroads lands and premises and will keep the Railroads, rolling stock and premises herein comprised in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or dis-

placed and will pay the principal of said twenty five hundred (2500) bonds and all interest due thereon at the times and places and in the manner in said Bonds and the interest warrants annexed thereto respectively specified.

Article 2.

And further, that if any interest warrant or anyone of said Bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the said Company will pay on demand at the places and in the moneys in said Bonds specified the principal of each and all of said Bonds then remaining due.

Article 3.

And further that said Oregon and California Railroad Company will on the 1st day of July 1885 and on every first day of July thereafter pay it the financial agency of the Company in New York to said Klaas Van Oterendorp and Philip N. Lilienthal or other the trustee or trustees for the time being of these presents the sum of twenty thousand dollars ($20,000) in American gold coin.

Article 4.

And further that in case default shall be made in any such payment of twenty thousand dollars ($20000) specified in the last article or any part thereof for six calendar months and such default shall not be waived as

hereinafter provided then said Company will forthwith pay the principal of each and all of said bonds then remaining due.

Article 5.

Until default in any payment required by the previous articles said Company shall freely possess the said Railroads lands and premises and the income earnings and profits thereof and may contract to sell and dispose of the lands granted by the, United States and of all other lands owned by the Company not required for the maintenance and operation of its railroads and received the proceeds thereof but no conveyance or release of said lands or any of them shall be valid and effectual unless such conveyance or release shall be executed by said Trustees or one of them or by their attorney or attorneys in fact thereunto lawfully authorized.

Article 6.

Said Klaas Van Oterendorp and Philip N Lilienthal shall hold the said payment of twenty thousand dollars ($20000) per annum as well as all interest they may receive upon Bonds purchased by them upon previous payments of said annual sum as a sinking fund to discharge and extinguish the whole of said twenty five hundred (2500) Bonds by annual redemption in the following manner. On the 1st day of April 1885 and on the 1st day of April in every year thereafter or as soon thereafter as may be said Klaas Van Oterendorp and Philip N Lilienthal or the Trustee or Trustees for the time

being of these presents shall cause to be drawn at the financial agency of the Company in New York in the presence of a Notary Public out of the whole number of Bonds then outstanding excluding those already belonging to the sinking fund such a number of Bonds as will on the 1st day of July then next ensuing be equal at par to said annual payment of twenty thousand dollars ($20000) and such additional sum as said Trustees shall be entitled to receive on account of the interest warrants on the bonds previously acquired by them for said sinking fund a due proportion of said Bonds being drawn for each class so that on the 1st day of July 1885 fifteen bonds for one thousand dollars ($1000) and ten Bonds for five hundred dollars ($500) will be redeemed by said sinking fund and a larger number on every 1st day of January thereafter.

Article 7.

Said Trustees shall publish by notice conspicuously posted upon or before the 30th day of April then next ensuing at the financial agency of the Company in New York and at the financial agency of the Company in Frankfort A M and so remaining until the 1st day of July then next ensuing and by an advertisement in seven newspapers of general circulation published respectively in New York London, Amsterdam, Frankfort, Munich Berlin and Basle the numbers of the bonds so drawn for redemption and s all pay such bonds at the option of the holder at the financial agency of the Company in New York or the financial agency of the

Company in Frankfort A M and in American or German money respectively on the first day of July then next ensuing or so soon thereafter as said Company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8.

When any Bonds shall have been drawn as aforesaid and notice shall be duly given as aforesaid of the numbers of the Bonds so drawn for redemption then each Bond so drawn shall become payable on the first day of July then next ensuing and shall draw no interest after that day unless on presentation thereof at the financial agency of the Company in New York or the financial agency of the Company in Frankfort A M Payment of said Bond or any interest due thereon shall be refused.

Article 9.

The Bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the interest warrants shall remain in full force and shall be regularly presented by the Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10.

Said Company shall have the right to give to said Trustees on or before the 1st day of April in any one year notice in writing that they will pay to said Trustees any larger sum than the annual payment herein

before provided for and said Trustees shall then draw a proportionally larger number of Bonds which shall become payable and cease to bear interest as provided in the previous Articles and said Company may even give such notice for the payment of all then outstanding Bonds. And thereupon said Trustees shall publish by notice and advertisement as in case of Bonds drawn that all outstanding Bonds will be redeemed and they shall become payable on the first day of July then next ensuing as if drawn for the redemption by the sinking fund.

Article 11.

When all of said Two Thousand and five hundred (2500) Bonds shall be redeemed by said sinking Fund or acquired and cancelled by said Company and handed to said Trustees so cancelled they shall enter satisfaction of record of these presents.

Article 12.

In case said Company shall fail to keep the said Railroads rolling stock equipment and premises herein comprised in good order and repair or in case default shall be made in any payment of any interest warrant on any of said Bonds or of the said sum of twenty thousand dollars ($20000) to be paid for a sinking fund as aforesaid or any part thereof and such default shall continue for six calendar months or of any taxes, assessed against said Railroads land and premises it shall be lawful for said Trustees to take possession personally or

by their agent, or agents of said Railroads rolling stock and equipment and the lands and other premises hereby conveyed and to operate the said Railroads and manage the same and collect and receive the income, earnings and toll thereof and the proceeds of lands contracted to be sold. and said Company hereby covenants and agrees that it will on demands surrender such possession and permit said Trustee to use and possess said Railroad rolling stock and premises, without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight moneys ticket, balance or other earnings and the purchase moneys of all lands, sold either then due or thereafter becoming due and in case it may be necessary or may be deemed advisable by said Trustees to take legal proceedings for foreclosure of this Mortgage or to obtain possession of said premises in pursuance of the provisions of this article they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

Article 18.

Said Trustees when in possession of said Railroads lands and premises shall have the right as irrovocable attorney or Attorneys of said Company to bring or defend in the name of the said Company any actions for the collection of income freight moneys, ticket balances, or other earnings or unpaid purchase money for lands sold or for obtaining or defending the possession of any

property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said Railroads or in any manner affecting the maintenance thereof,

Article 14.

Said Trustees are hereby authorized in their discretion to accept possession of said Railroads with the rolling stock lands and appurtenances herein comprised although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 15.

It shall be the duty of said Trustee to take possession of said Railroads lands and premises after any such default as aforesaid upon written requistion made to them for such purposes by the holders of not less than one quarter in amount of said Bonds then outstanding.

Article 16.

Said trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating the managing or keeping in good order and repair the said Railroads rolling stock lands and premises to hire and employ such managers officers, clerks, agents, attorneys and assistants as they shall deem useful or necessary and

to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to their hands and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises and the earnings, income and proceeds thereof and in case said Company shall fail on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid they may enter upon and take possession of said Railroads lands and premises in the manner as if said Company had made default in payment of interest on the Bonds hereby secured and retain possession and receive the income, earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17.

After any such default as aforesaid in payment of interest or sinking fund payments or any part thereof shall have been made and such default shall have continued for on year and shall not have been waived as hereinafter provided or in case the principal of any of said Bonds shall not be paid on the 1st day of July

1920 it shall be the duty of said Trustees to forthwith proceed to enforce this security and to sell said Railroads rolling stock equipment and appurtenances and the land and premises comprised herein in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18.

Such sale or sales may be made either without suit by said Trustees or their duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the "New York Times" and Frankfurter Zeitung or in case said papers or either of them shall not be then published then in some other paper or papers of general circulation published in the same place or places and selected by said Trustees and in case said sale shall be adjourned the like four weeks notice shall be given of the adjourned sale or such sale may be made judicially by action or suit brought by said Trustees for the foreclosure of this Mortgage or enforcement of the liens hereby created or administration of the trusts of these presents as said Trustees may deem most expedient.

Article 19.

The moneys received from the net earnings of said

railroads when in possession of said Trustees shall be applied in the following order. In the first place in the payment of the cost and expenses of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation to said Trustees (in addition to the salary herein provided for) and the fees of counsel and Attorneys and in the next place in payment of all interest warrant then over due (excluding those on Bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date: and lastly in payment of the principal of any of said Bonds then outstanding. The moneys received on any such sale as hereinbefore provided or from the proceeds of land sold should be applied in the following order: In the first place in payment of costs and expenses of such sale and of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation of said Trustee (in addition to the salary herein provided for) and the fees of counsel and attorneys and in the next place in payment of all interest, warrants overdue and of the principal of said Bonds then outstanding without discrimination or preference of interest over principal or of interest warrants of earlier date over those of later date but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest,

Article 20.

On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustee shall vest in said purchaser all the title and interest of said Company as fully and effectually as if said Company were party thereto.

Article 21.

Said Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of the Bonds intended to be secured by these presents that it will from time to time and at all times hereafter upon reasonable request made execute acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors from time to time of these presents upon the trust and for the purposes herein expressed the said Railroads rolling stock equipment lands and premises herein comprised free from all prior liens and encumbrances except as hereinbefore specified as by the said Trustees or their counsel learned in law shall be reasonably devised advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees so as to fully indentify the lands intended to be comprised in these presents.

Article 22.

On payment of all of said Bonds and the interest warrants thereto attached and all expenses incurred by the Trustees in the execution of the trustes of these presents. This indenture shall become void and all the estate and interest of the Trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23.

All rights and powers by these presents given to or covenants stipulations or agreements made with said Klaas Van Oterendorp and Philip N Lilienthal shall survive and enure to the benefit of the Trustees for the time being of these presents in the same manner as if said Trustee or Trustees had been named herein.

Article 24.

In these presents the word "Trustees" shall be held to mean the said Klaas Van Oterendorp and Philip N Lilienthal while continuing to be trustees hereof and the Trustees for the time being of these presents whether both or either be original or new.

Article 25.

No trustee shall be in any manner responsible for any act default, or misconduct of his co Trustee nor for that of any agent, bank banker, broker or other person employed by him or his co trustee, unless he shall be

chargeable with culpable negligence in their selection or in the contrivance of their employment nor otherwise except for his own wilful default misconduct or gross negligence.

Article 26.

The Trustees may pay such reasonable compensation as the shall deem proper to all agents officers attorneys and servants whom they may reasonably employ in the management of their trust, and each Trustee shall be paid by said Company or in default out of the trust moneys the sum of two thousand dollars each for their entire service in the execution of the trusts herein contained and in addition a further reasonable compensation for such additional services as he may be called upon to render in taking possession of an managing the premises or selling the same or brining suit for the foreclosure of these presents the enforcement of the liens or trusts hereby given or the collection of the moneys secured thereby.

Article 27.

In case of death, resignation or incapicity to act of any Trustee the surviving or continuing Trustee shall appoint another trustee in the place of stead of the Trustee so dying resigning or becoming incapable and in case there shall be no surviving or continuing Trustee or such surviving or continuing trustee shall fail for three calendar months after the death resignation or incapacity of his previous co, Trustees to appoint a new trustee then

said company or the holder of any Bond secured by these presents may apply to any Judge in the Circuit Court of the United State for the District of Oregon to make such appointment and any such Judge may appoint a new Trustee. by instrument under his hand and seal without suit or other legal proceedings therefor but in no case shall a resident of Oregon be appointed or be capable of acting as a Trustee of these presents.

Article 28.

A Majority in amount of the holders of the outstanding Bonds secured by these presents shall have full power at any time without suit and whether there be any vacancy or not to remove one or both the existing Trustees and to appoint another Trustee or Trustees in his or their place and to increase or diminish the number of Trustees and any such act of the majority in amount of the Bond Holders shall be deemed to be sufficiently made, executed. evidence and proved by a written instrument or instruments purporting to be signed by the Bondholders and stating the identifying numbers and the amount of the Bonds held by each signatary and the respective signatures to which and the production to a notary at the time of signature of the Bonds specified shall be acknowledged before and certified by a Notary Public of any County and his certificate attached authenticated by his Notarial seal.

Article 29.

Any appointment of a New Trustee made by the

surviving or continuing trustee or the majority of the Bond holders or a Judge as hereinbefore provided shall be effectual to vest in the new Trustee all estate, rights, trusts powers and duties as fully as if he were a Trustee party to these presents without any new deed or conveyance but nevertheless said Company hereby covenants in any and every such case to make upon request of the new Trustee all such deeds, conveyances and assurances as may be appropriate for more fully and certainly resting in and confirming to such new Trustee such estate, rights, powers trusts and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his successor.

Article 30.

A Majority in amount of the holders of the outstanding Bonds secured by these presents may by written instrument to be executed and proved as provided in Article 28 at any time before the actual sale of any part of the premises waive any default in payment of interest or of the annual payment to the sinking fund yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless said Company shall together with such instrument or instruments or Waiver hand to the Trustees a sum of money sufficient to pay all interest warrants and sinking fund payments then in arrear and said Trustee shall then proceed to pay said interest warrants and redeem the Bonds so provided for

as nearly as possible in the manner provided by these presents,

Article 31.

Said Company for itself, its successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay appraisement or redemption law or laws, requiring liens or Mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by the Trustees without suit and on any such sale said Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32.

In case of any sale of said premises whether by the Trustees or a Court any purchaser shall be entitled to deliver in part payment of the purchase money any of the outstanding interest warrants or Bonds secured by these presents and such interest warrants or Bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale afte the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previsouly by the Trustees or the Court as the case may be and announced in the advertisment of sale.

Article 33.

The trustees shall have power to release from the

lien of these presents any land rolling stock or other appurtenances become useless, for the purpose of the Railroads by *alter*ation of route changes in machinery or equipment or otherwise but only on condition that the property so sold be at the same time replaced by other similar property of equal value and subjected to the lien of these presents but until default as aforesaid in payment of interest or the sinking fund payment the Company shall have the right to sell and dispose at its discretion of all said lands owned by the Company and States and of all other lands owned by the Company and not required for the maintenance and operation of its Railroads and to receive and dispose of the proceeds thereof as of the other revenues of the Company and said Trustees shall from time to time as may be required release the lands so sold from the lien of these presents in manner hereinbefore provided.

Article 34.

On any sale whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidence and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold, on behalf and for the benefit of such Bondholders, but only on condition that due provision is made by such majority to the satisfaction of the trustees or the Court as the case may be

for payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the Bond holders not concurring in such request.

Article 35.

On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said Bondholders without any right of redemption or resale in favor of said Company or any Bondholder.

Article 36.

The Trustees shall invest all trust funds which may from time to time come to their hands until required in the purchase of United States Stocks or Bonds at their market value or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks of Bonds.

In witness whereof said Company pursuant to a Resolution of its Board of Directors duly authorizing the same has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary and the said Trustees respectively and the said parties of the fourth part, the said committee have hereunto set their hands and seals the fourth day of February 1881.

Signed, sealed and delivered in presence of
P Schulze
E P Rogers
(Corporate Seal)

Oregon and California Railroad Company.
By R KOEHLER, President

Oregon and California Railroad Company
By A. G. CUNNINGHAM, Secretary

R KOHLER

HEINRICH HOHENEMSER
By R KOEHLER his attorney.

Trustees as in foregoing instrument mentioned and parties of the second part.

R KOEHLER

HEINRICH HOHENEMSER
By R KOEHLER his attorney

Trustees as in foregoing instrument mentioned and parties of the third part.

R KOEHLER

HEINRICH HOHENEMSER
By R KOEHLER his Attorney

PHILLIP B BONN
By R KOEHLER his attorney

PAUL REIGANUM
By R KIEHLER his attorney

HERMANN KOEHLER (Seal.)
By R KOEHLER his attorney

LUDWIG GRUENEBAUM
By R KOEHLER His attorney

CARL POLLITZ
By R KOEHLER His attorney

ADOLPH OTTO
By R. KOEHLER His attorney

MICHAEL BENJAMIN
By R KOEHLER His attorney

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act in behalf of said Bondholders by their association and parties of the fourth part.

K VAN OTERENDORP

P N LILIENTHAL

Trustees as in foregoing instrument mentioned and parties of the fifth part.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on the 4th day of February A D 1881 before me the undersigned a Notary Public in and for the said County of Multnomah State of Ore-

gon duly commissioned and qualified came Richard Koehler, President of the Oregon and California Railroad Company And A G Cunningham Secretary of the Oregon and California Railroad Company whose names are subscribed to the foregoing indenture as the president and Secretary of said Oregon and California Railroad Company both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said Richard Koehler as President and he the said A G Cunningham as Secretary of the Oregon and California Railroad Company executed the foregoing indenture as and for the act and deed of the said Oregon and California Railroad Company freely and voluntarily and for the uses and purposes therein mentioned. And the said A G Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at East Portland Multnomah County, Oregon, that he is the legal custodian of an is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company that the seal affixed to the foregoing indenture is such corporate seal; that the same was so affixed by him as secretary of said Company on the 4th day of February 1881, by order of the Board of Directors of said Company and that he signed his name as Secretary thereto by the Like order of the Board of Directors of said Company.

In witness whereof I have hereunto set my hand

and affixed my official seal at the City of Portland Oregon the date first above written.

(Notarial Seal) PAUL SCHULZE,

Notary Public for Oregon.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and are of the parties of the second part thereto and also the above named Heinrich Hohenemser as Trustees mentioned in the foregoing instrument and one of the parties of the second part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such Trustees and the said Richard Koehler in his own right as Trustee and and also for and on behalf of the said Heinrich Hohenemser as trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE

Notray Public for Oregon.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto and also the above named Heinrich Hohenemser as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such trustees and the said Richard Koehler in his own right as Trustee and also for and on behalf of the said Heinrich Hohenemser as Trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the City of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE

Notary Public for Oregon.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and

for said County of Multnomah State of Oregon personally appeared the above named Richard Koehler in his own proper person and also the above named Heinrich Hohenemser by his attorney in fact the said Richard Koehler and also the above named Philipp B Bonn by his attorney in fact the said Richard Koehler and also the above named Paul Reinganam by his attorney in fact the said Richard Koehler and also the above named Hermann Koehler by his attorney in fact the said Richard Koehler and also the above named Ludwig Giuenebaum by his attorney in fact the said Richard Koehler and also the above named Carl Pollitz by his attorney in fact the said Richard Koehler and the above named Adolph Otto by his attorney in fact the said Richard Koehler and also the above named Michael Benjamin by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the above and foregoing instrument and the said Richard Koehler in his own right and on his own behalf as also for and on behalf of the said Heinrich Hohenemser, Phillip-p B Bonn, Paul Reingamin, Hermann Koehler, Ludwig Gruenebaum Carl Pollitz, Adolph Otto and Micheal Benjamin, acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE,

Notary Public for Oregon.

State of California)
ss.
City and County of San Francisco)

Be it remembered that on this 12th day of February 1881 before me the undersigned a Commissioner of Deeds for the State of Oregon residing at San Francisco California duly commissioned sworn and fully qualified personally came Klaas Van Oterendorp and Philip N Lilienthal to me personally known to be the individuals described in and who executed the foregoing Indenture and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal at San Francisco California the date above written.

(Seal of Commissioner of Deeds)

SAMUEL S MURFEY

Commissioner of Deeds for the State of Oregon residing at San Francisco California.

S-chedule

of Rolling Stock of (consolidated) Oregon and California Railroad Company referred to in the foregoin indenture.

20 Locomotives numbered 1 to 20 inclusive

18 Passenger Coaches numbered 1 and from 8 to 14 inclusive.

5 Mail and Express Cars numbered 1, 3, 4, 5, 6.

3 Smoking and baggage cars numbered 1, 2, 3,

290 Box Cars even numbers from 2 to 394 and from 600 to 786

77 Flat Cars odd numbered from 1 to 153

12 Stock Cars numbered 500 to 511 inclusive.

Received for record Feby 28th, 1881 at 3:40 o'clock P M

No. 9567

STATE OF OREGON,)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement. The Oregon and California Railroad Co. with Klaas Van Oterendorp et al, has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1918.

(SEAL) JNO. B. COFFEY,
County Clerk.

DEFENDANTS' EXHIBIT 396

is a certified copy of a mortgage of date June 1, 1881, executed by the Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, recorded in Book 27, page 1, of the Records of Mortgages of Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of said granted lands was situated, which mortgage is as follows:

Mortgage Book 27 page 1.

O & C R R Co. To Villard et al

THIS INDENTURE, made the first day of June, in the year one thousand eight hundred and eighty one, between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the first part and Henry Villard, Horace White and Charles Edward Bretherton, all of the City and State of New York, hereinafter called the Trustees) of the second part.

WHEREAS, By an Act of Congress, entiled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California to Portland in Oregon," and approved July 25th, 1866, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the "California and Oregon Railroad Company' organized under an Act of the State of California, to protect certain parties in and to a railroad survey to "connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company organized under the laws of Oregon as the Legislature of said State, shall hereafter designate, be and they are hereby authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland, in Oregon, and the Central Pacific Railroad in California in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly through the Sacramento and Shasta Valleys, to the northern boundary of the State of California. And the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the Southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company. Provided, that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the

other Company shall have likewise arrived at the same line, shall have the right and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of the said railroad and telegraph line shall be completed."

Section 2. And be further enacted that there be and hereby is granted to the said Companies, their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad, every alternate section of public land, not mineral designated by odd numbers to the amount of twenty alternate sections per mile (ten on each side) of said railroad line, and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers preempted, or otherwise disposed of, other lands, designated as aforesaid shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of the said first named alternate sections and as soon as the said Companies or either of them shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof not less than sixty continuous miles from

either terminus, the Secretary of the Interior shall withdraw from said public lands herein granted on each side of said railroad so far as located and within the limits before specified.

The lands herein granted shall be applied to the building of said road within the State respectively wherein they are situated. And the sections and parts of sections of land which shall remain in the United States, within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided, that bona fide and actual settlers under the pre-emtion laws of the United States may, after due proof of settlement, improvement and occupation as now provided, by law, purchase, the same at the price fixed for said lands at the date of such settlement. improvement and occupation. And provided also that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States anything in this Act to the contrary not withstanding.

"Section 3. And be it further enacted, that the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands, adjacent to the line of said road earth, stone, timber, water and other materials for the construction thereof." Said right of way is granted to

said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road.

And Whereas, by another Act of Congress entitled "An Act granting Lands to aid in the construction of a railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon and approved May 4th, 1870. It was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Juntion near Forest Grove to the Yamhill River near McMinnville, in the State of Oregon there is hereby granted to the Oregon Central Railroad Company now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road not exceeding forty acres at any one place; and also each alternate section of the public lands, not mineral excepting coal or iron lands, designated by odd numbers nearest to the

said road to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency.

And Whereas said Oregon and California Railroad Company has succeeeded to and become invested with and is now possessed of and entitled to all the grants, right, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore recited Act of Congress and there has been already accepted and approved by the United States as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph 47 miles in length and the company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph author-

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ized by and specified in said acts of Congress.

And Whereas, by a deed of Mortgage and trust dated the first day of January, 1881, the company mortgaged its railroads and other property therein described to Klass Van Oterendorp and Philip Lilienthal, to secure an issue of 2500 new first mortgage bonds, for the aggregate amount of two million dollars in American gold coin or eight millions five hundred thousand marks in German money bearing interest at the rate of six per cent per annum payable half yearly on the first day of January and July and redeemable at par at the option of the company all of which bonds have been issued and are now outstanding.

And Whereas the company in pursuance of its articles of incorporation and by laws, and of a plan of reorganization of the company approved and ratified by a special meeting of its stockholders held on the 7th day of May, 1881, has resolved to make an issue of first mortgage bonds as hereinafter described which shall be limited to the rate of twenty thousand dollars for each mile of railroad now or hereafter constructed by the Company as hereinafter specified and actually constructed at the time of issue and of which bonds six million dollars in amount shall be now issued, and to secure the payment of said bonds and the interest thereon in the manner herein provided.

And Whereas, six thousand (6000) in number, six million dollars in amount of said bonds intended to be secured by these presents together with the coupons an-

nexed thereto and the certificate of The Trustees thereon have been prepared and are numbered consecutively from 1 to 6000 both inclusive and bear even date herewith and are in the form following, that is to say.

United States of America, State of Oregon,

Oregon and California Rail Road Company.
of Portland, Oregon.

First mortgage six per cent gold bonds, Amount limited to $20,000 per mile of Constructed road, Principal redeemable at 110 by a cumulative sinking fund of one per cent per annum, commencing in 1886.

$1000 No. 0000 $1000

The Oregon and California Railroad Company, for value received, hereby bonds itself to pay to the bearer, at the office of the company in the City of New York, on the first day of July, A. D. 1921 (unless this bond shall be sooner redeemed as hereinafter mentioned) the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold coin at the rate of six per centum per annum half yearly on the first days of January and July in each year free of tax, upon presentation and surrender at such office as they respectively mature, of the eighty coupons annexed.

This bond is one of the first mortgage six per cent gold bonds of the Oregon and California Railroad Company, issued and to be issued only at the rate of $20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of

issue, all being of the same amount, form and tenor, and payable in the same manner and differing only in the identifying numbers, dates and the number of coupons, annexed, and all of which bonds issued and to be issued are equally secured by a first mortgage, dated June 1, 1881, of all the railroads of said Company, constructed and to be constructed, that is to say from Portland to Astoria in accordance with the act of Congress of May 4, 1870, and to Junction and from East Portland to California in accordance with the act of Congress of July 25, 1866, and of all its lands rolling stock and all other property present and future of said company of every description to Henry Villard, Horace White and Charles Edward Bretherton as Trustees, subject, however, to a redeemable prior lien, two million dollars in amount to be discharged as hereinafter mentioned, and which mortgage is recorded in the office of the County Clerk, in Portland, in Oregon and in all other counties in which any part of the railroads and lands of said company are situated; and the said mortgage provides that the proceeds of all bonds sold shall be received by the said trustees and shall be applied by them in discharging the said prior lien for two millions of dollars and the balance of such proceeds, after discharging said lien, shall be applied only for the construction of the road, first, to California and when such road is completed, then to Astoria and Junction; and that, for the purpose of securing such application said Trustees shall pay over the proceeds only under the advice and upon the certificate of a supervising engineer, appointed by them.

The company binds itself to the bearer to constitute a cumulative sinking fund, for redemption, at 110 per cent of the par value thereof, of all said bonds, such sinking fund including the gross proceeds of all lands now or hereafter granted by the United States to said Company, together with such an additional sum to be paid annually by said company to said Trustees on the first day of July in each year, commencing July 1, 1886, as will make up the total annual sinking fund to one per centum from July 1, 1886, upon the aggregate amount of bonds issued, together with, and in addition to the amount of the interest upon the bonds previously redeemed."

The bonds to be redeemed by said sinking fund shall be drawn by lot by said Trustees, at the office of the Company in New York on the first day of April in each year and the numbers of the bonds so drawn advertised in daily newspapers of general circulation published in New York, London and Frankfort o/M. In case this bond shall be so drawn and advertised the amount thereof shall become payable, together with the additional sum of one hundred dollars, in United States gold coin, one the first day of July, then next, at the office of the Company in New York, and it shall bear no interest after such date, unless, upon presentation, payment thereof shall be refused.

Said company further agrees to receive this bond at par in payment for any lands offered for sale by said Company.

Said company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said company shall fail, for six calendar months, to pay any coupon annexed to this bond when the same becomes due or shall fail for six calendar months to pay any sum which may be payable to the said Trustees on account of the sinking fund hereinbefore mentioned, and such default in payment of interest or of the sum payable on account of said sinking fund shall not have been waived by a majority in amount of the holders of said bonds then outstanding in the manner provided in said mortgage. Said company further binds itself to maintain and keep during the continuance of this mortgage financial agencies in London and Frankfor o/M and to cash on presentation at such agencies, all said bonds, and the coupons thereof, as the same become payable, at the fixed rate of exchange of four shillings and two pence sterling per dollar in London and four mark twenty five pfennings in Frankfort o/M. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustees.

In Witness Whereof, said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Assistant Secretary this first day of June, 1881.

(Seal)

Assistant Secretary President.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of July, 1921, thirty dol-

lars in United States gold coin free of tax, at the office of the Company in New York being six months interest on First Mortgage Bond of said Company. No... unless said Bond shall have been previously redeemed.

Treasurer.

(Trustees Certificate)

We hereby certify that the within bond is one of the First Mortgage six per cent gold bonds of the Oregon and California Railroad Company, secured by the within mentioned mortgage dated June 1st, 1881, and made by said Company to us as Trustees and that the total amount of said bonds certified by us does not exceed the rate of $20,000. for each mile of actually constructed railroad.

Trustees.

Now, this Indenture Witnesseth, that in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued, and all such bonds as shall be hereafter issued on the security of these presents, but not exceeding in all twenty thousand dollars for each mile of road actually constructed at the time of issue and the interest thereon, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg,

and between Portland and Corvallis and Albany and Lebanon in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad, in all about three hunred and six and one half (306½) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk and Benton, in said State of Oregon, together with the ferry ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company, to be hereafter constructed, that is to say, from Forest Grove to Astoria in accordance with the Act of Congress of May 4th, 1870, hereinbefore recited, and from Corvallis to Junction, and from Roseburg to California to a junction within the Central Pacific Railroad in accordance with the act of Congress of July 25th, 1866, herein before recited and all lands, rights of way, easements and premises now acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of the right of way of said railroads or for grounds, sidetracks, depots, warehouses, tanks, round houses, stock yards, or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroads already completed between the termini aforesaid and not yet sold, estimated to be in amount about one million nine hundred thousand acres, and all lands which may be hereafter granted to said Company by the United States and which lands are intended to be

more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes, ties, timber, iron switches, frogs, depots, warehouses, machine shops, bridges, trestel-work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices, docks and warehouses of the Company in Portland and East Portland, or elsewhere and all locomotives, cars and other rolling stock, railroad supplies, fuel, tools and machinery now used or which may hereafter be used in or provided for the maintenance of operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same, and all the income, earnings, and profits of said railroads, lands, and premises, and all other present and future property of every description of said Oregon and California Railroad Company.

To have and to hold the said railroads, lands, rolling stock, equipment, premises and property unto the use of said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents as joint tenants and not as tenants in common free from all prior liens and encumbrances whatever except the prior lien for two millions of dollars created by the said deed of mortgage and trust to Klaas Van Oterendorp and Philip Lilienthal hereinbefore referred to, and which lien is to be discharged as hereinafter mentioned in trust nevertheless for the equal benefit and security, pro rata of every

holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers, and subject to the provisions agreements, covenants and stipulations contained in the following articles that is to say:

Article I. The said Oregon and California Railroad Company hereby covenants with said Trustees that it will proceed with all reasonable dispatch to complete its said railroad to California, so that cars can run through from Portland to San Francisco, and will keep all the railroads from time to time constructed and rolling stock and other property of said company in good order and repair, and will reconstruct, replace and restore all such, or so much, and such parts thereof as may be worn out, wrecked, destroyed or displaced, and will pay all taxes assessed against said railroads, lands and premises, and will pay the principal, moneys, secured by all bonds to be issued on the security of these presents, and all interest due thereon at the times and places, and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further, that if any coupon on any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calen-

dar months and such default shall not be waived in manner hereinafter specified, then the said company will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. And further, that said Oregon and California Railroad Company will create and maintain a cumulative sinking fund for the redemption of all said bonds at the rate of 110 per cent of the par value thereof, and will for such purpose on the first day of July, 1886, and on every first day of July thereafter, pay at the office of the company in New York to said Trustees, such a sum as will in addition to the gross proceeds of all lands now or hereafter granted by the United States to said company, make up a total amount of one per cent per annum in gold coin computed from the first day of July, 1886, upon the aggregate amount of bonds issued.

Article 4. And further that in case default shall be made in any annual payment to be made for such sinking fund specified in the last article or any part thereof for six calendar months, and such default shall not be waived as hereinafter provided, then said company will forthwith pay on demand at the place and in the manner in the said bonds specified, the principal of each and all of said bonds then remaining due at the rate of 110 per cent of the par value thereof.

Article 5. Until default in any payment required by the previous articles, said company shall freely possess the said railroads, lands and premises, and the income,

earnings and profits thereof, and may contract to sell and dispose of the lands granted by the United States and of all other lands owned by the company not required for the maintenance and operation of its railroads, but no such sale nor any conveyance or release of said lands or any of them, shall be valid and effectual unless such sale be at a price approved by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees as one of them or by their attorney or attorneys in fact, thereunto lawfully authorized.

And for the purpose of facilitating such sales, said Trustees may from time to time either concur with said company in appointing an agent to make such sales, and executed such releases and conveyances as their attorney in fact or may appoint an agent of their own to supervise and join in such sales, and to execute such releases and conveyances as their attorney in fact and they may delegate to any such agent all their powers and duties in respect to the sale of lands except the custody of the proceeds thereof.

Article 6. Said Trustees shall hold the said proceeds of all lands sold and the payments to be made to them by said company as above mentioned, as well as all interest received upon bonds redeemed as a cumulative sinking fund to discharge and extinguish the whole of said bonds by annual redemption at the rate of 110 per cent of the par value thereof in the following manner; on the 1st day of April, 1886, and on the 1st day of

April, in every succeeding year, or as soon thereafter as may be said trustees shall cause to be drawn at the office of the company in New York in the presence of a Notary Public out of the whole number of bonds then outstanding such a number of bonds as said sinking fund will, on the 1st day of July then next ensuing, suffice to redeem as hereinbefore mentioned.

Article 7. Said Trustees shall publish by notice conspicuously posted up on or before the 30th day of April next ensuing after each such drawing, in the office of the company, in New York and at the financial agencies of the Company in London and Frankfort o/M and so remaining until the 1st day of July then next ensuing and by advertisement in daily newspapers of general circulation, published respectively in New York, London and Frankfort, the numbers of the bonds so drawn for redemption and shall pay and redeem such bonds so drawn for redemption and shall pay and redeem such bonds at the rate of 110 per cent of the par value thereof, at the office of the company, in New York on said first day of July, or so soon thereafter as the said company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8. When any bonds shall have been drawn as aforesaid and notice given of the numbers of the bonds so drawn for redemption then each bond so drawn shall become payable on the first day of July then next ensuing, together with the additional sum of one hundred dollars in gold coin of the United States, making in all

110 per cent of the par value thereof, payable at the office of the company in New York, and shall bear no interest after that day, unless, on presentation thereof at the office of the Company in New York, payment of said bond at the rate aforesaid or any interest due thereon shall be refused.

Article 9. The bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the coupons shall remain in full force and shall be regularly presented by The Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10. All bonds which from any cause remain unredeemed on the first day of July, 1921, shall be then paid off at the rate of 110 per cent of the par value thereof.

Article 11. When all of said bonds shall be redeemed by said sinking fund or acquired and cancelled by said company and handed to said Trustees, so cancelled, they shall enter satisfaction of record of these presents.

Article 12. In case the said company shall fail to keep the said railroads, rolling stock equipment and premises herein comprised, or at any time hereafter subject to the lien of these presents in good order and repair, or in case default shall be made in the payment of any coupon on any of said bonds or of the said sums to be paid for the sinking fund as aforesaid or any part thereof, and such default shall continue for six calendar months, or in payment of any taxes assessed against said railroads lands and premises, it shall be lawful for said

Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed, or which may be then subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold, and said company covenants and agrees that it will, on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight, moneys, ticket balances or other earnings and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary or may be deemed advisable by said Trustees, to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article, they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers, as they may think most expedient.

Articles 13. Said Trustees, when in possession of said railroads lands and premises shall have the right as irrevocable attorney or attorneys of said company, to bring or defend, in the name of the said company, any actions for the collection of income, freight, moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the

possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

Section 14. Said Trustees are hereby authorized in their discretion to accept possession of said railroads, with the rolling stock, lands, and appurtenances herein comprised, although no such default as aforesaid shall have been made if said company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof, as hereinbefore provided.

Article 15. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such default as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said bonds then outstanding.

Article 16. Said Trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants, as they shall deem necessary or useful and to defray all expenses of such employment, and otherwise executing the trusts of these

presents, and to pay any taxes assessed upon the trust premises or any part thereof, or any other prior charges thereon out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes, or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum, shall be a first charge on the trust premises and the earnings, income and proceeds thereof, and in case said company shall fail, on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid, they may enter upon and take possession of said railroads, lands and premises in the same manner as if said Company had made default in payment of interest on the bonds hereby secured, and retain possession and receive the income earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17. After any such default as aforesaid, in payment of interest or sinking fund payments or any part thereof, and such default shall have continued for one year and shall not have been waived as hereinafter provided, or in case the principal of any of said bonds shall not be paid on the 1st day of July, 1921, together with the additional sum hereinbefore specified, it shall be the duty of said trustees to forthwith proceed to enforce this security and to sell said railroads, rolling stock, equipment and appurtenances and the lands and pre-

mises comprised herein, or then subject to the lien of these presents in one lot or in more than one lot or parcel, and at one time or at different times, and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise, upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent, by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York and selected by said Trustees); and in case said sale shall be adjourned, the like four weeks' notice shall be given of the adjourned sale; or, at the option of said Trustees such sale may be made judicially by action or suit, brought by said Trustees for the foreclosure of this mortgage or enforcement of the liens hereby created, or administration of the trusts of these presents, as said Trustees may deem most expedient.

Article 19. The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided or from lands sold, when in possession of said Trustees shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts

of these presents and the management and operation of said railroads, and the protection and preservation of the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of all coupons then over due (excluding those on bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date; and lastly in payment of the principal of any of said bonds then outstanding, together with the same additional sum as would have become payable, if they have been drawn for redemption as hereinbefore provided.

Article 20. On any sale by virtue of these presents the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser all the title and interest of said company as fully and effectually as if the company were party thereto.

Article 21. The company hereby covenants and agrees with the said Trustees, on behalf and for the benefit of the holders of the bonds intended to be secured by these presents, that it will from time to time, and at all times hereafter, upon reasonable request made, execute, acknowledge and deliver, all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors

from time to time as Trustees of these presents upon the trusts, and for the purposes herein expressed the said railroads, rolling stock equipment, lands and premises herein comprised free from all prior liens and encumbrances and all other present and future property of said company of every kind and description as by the said Trustees or their Counsel learned in the law shall be reasonably devised, advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees, so as to fully identify the lands intended to be comprised in or subject to the lien of these presents.

Article 22. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the trusts of these presents this indenture shall become void, and all the estate and interest of the trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23. All rights or powers by these presents given to or covenants, stipulations or agreements made with said Henry Villard, Horace White and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

Article 24. In these presents, the word "Trustees"

shall be held to mean the said Henry Villard, Horace White and Charles Edward Bretherton while continuing to be Trustees hereof and the Trustees for the time being of these presents whether all or any be original Trustees or new Trustees.

Article 25. No trustee shall be in any manner responsible for any act, default or misconduct of his co Trustee nor for that of any agent, bank, banker, broker, or other persons employed by him or by his co Trustee, unless he shall be chargeable with culpable negligence in their selection, or in the continuance of their employment, nor otherwise, except for his own willful default, misconduct or gross negligence. But except as herein specially authorized no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee or any other person whatever.

Article 26. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust and said Trustees shall be paid by said company, or in default, out of the trust moneys the sum of fifty cents each for each bond certified by them and one eighth per cent on all moneys passing through their hands and disbursed by them for their entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as they may be called upon to render in taking possession of and man-

aging the premises or selling the same, or bringing suit for the foreclosure of these presents the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by these presents.

Article 27. In case of the death resignation or refusal or incapacity to act of any Trustee the surviving or continuing Trustees or Trustee shall by deed appoint a suitable person as trustee in the place of stead of the trustee so dying, resiging, refusing or becoming incapable, and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee, shall fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co trustee to appoint a new trustee then said company or the holder of and bond secured by these presents may apply to any judge in the Circuit Court of the United States for the district of Oregon to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or legal proceedings therefor; but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the courts of the State.

Article 28. A majority in amount of the holders of the outstanding bonds, at any time secured by these

presents shall have full power at any time, without suit and whether there be any vacancy or not to remove all or any of the then existing Trustees, and to appoint other Trustees or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the trustees or as sole Trustee, and any such act of the majority in amount of the bondholders shall be deemed to be sufficiently made, executed, evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the identifying numbers and the amount of the bonds held by each signatary and the respective signatures to which, and the production to a notary at the time of signature of the bonds specified shall be acknowledged before and certified by a notary public, and his certificate attached, and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary, so purporting to act in the United States, the British Dominions, Holland, France or the German Empire.

Article 29. Any appointment of a new Trustee, made by the surviving or continuing trustees or trustee or the majority of the bondholders or a judge as hereinbefore provided shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee party to these presents, without any new deed or conveyance but nevertheless the company hereby covenants in any and every such case, to make upon request

of the new Trustees or Trustee, all such deeds, conveyance and assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties, and every resigning Trustee shall, on like request, make and execute such deeds conveyances and assurance to his successors or successor.

Article 30. A majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed as provided in Article 28, at any time before the actual sale of the premises waive any default in payment of interest, or of the annual payment to the sinking fund, yet so far only that the principal of the bonds shall cease to be payable forthwith, in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless the company shall together with such instrument or instrument of waiver, hand to the trustees a sum of money sufficient to pay all coupons and sinking fund payments then in arrear, and said Trustees shall then proceed to pay said coupons and redeem the bonds so provided for as nearly as possible in the manner provided by these presents. And such a majority may, in like manner at any time, direct and authorize the funding of any coupons secured by these presents whether overdue or not into bonds secured by these presents provided, however, that the aggregate amount of all bonds secured by these presents shall never exceed the rate of twenty thousand dollars for each mile of constructed road as hereinbefore pro-

vided. Any such funding of coupons into bonds shall be binding upon the minority of said bondholders, and shall be carried out by said Trustees who shall have power to do all things necessary or proper for the purpose.

Article 31. The company for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisment or redemption laws, or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing, or hereafter passed, which, but for this provision, would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by a Trustee without suit; and on any such sale said company for itself, its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32. In case of any sale of said premises whether by the trustee or by a court, any purchaser shall be entitled to deliver in part payment of the purchase money, any of the outstanding coupons or bonds, secured by these presents and such coupons or bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses, all such bonds being reckoned at 110 per cent of their par value. The payment to be made in cash to cover such expenses, shall be fixed previously by the Trustees or the Court as the case may be, and announced in the advertisement of sale.

Article 33. The Trustees shall have power to release from the lien of these presents any land, rolling stock or other property, become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise, but only on condition that the property so sold be forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 34. On any sale, whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right, by written instrument, evidenced and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the trustees to bid for the property to be sold on behalf and for the benefit of such bondholders, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the court, as the case may be, for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholders not concurring in such request.

Article 35. On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said bond holders without any right of redemption or resale, in favor of said Company or any

bondholders.

Article 36. The Trustees shall deposit all trust funds which may from time to time come to their hands in their joint names, in the London and San Francisco Bank, Limited, or such other respectable bank or banks, trust company or companies in London, New York, Frankfort, San Francisco or Portland, as they may from time to time agree upon and may from time to time invest the same until required in the purchase of United States stocks or bonds, at their market value, or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks or bonds.

Article 37. The six thousand bonds intended to be now issued and secured by these presents and all other bonds which may at any time hereafter be created and intended to be secured by these presents shall, after the execution thereof by the company be delivered to said Trustees to be certified by them as herein provided and shall not be delivered back when certified to said company, but shall be retained and held by said Trustees, who shall only deliver them to the Company or to the purchasers of such bonds upon the payment to said Trustees of the price thereof.

Article 38. The bonds to be issued on the security of these presents (except the first issue of 6,000 bonds) shall only be sold or disposed of upon the terms and at a price approved of by said Trustees.

Article 39. The proceeds of the bonds sold or dis-

posed of shall be applied by said Trustees first in paying off and discharging the prior lien of two millions of dollars hereinbefore referred to, and the residue shall be held by them as a construction fund and shall be exclusively disbursed for the completion of the railroads of said Company, first to California in accordance with said Act of Congress of July 25, 1866, or with any amendments thereof which may be hereafter made by Congress and accepted by said Company and when the railroad to California is completed so that cars can run through from Portland to San Francisco then to Astoria and Junction, in accordance with said act of Congress of May 4th, 1870.

Article 40. For the purpose of securing the due application of the proceeds of bonds to the construction of said railroads as aforesaid the trustees shall disburse such proceeds only under the advice and upon the certificate of a competent engineer from time to time agreed upon and nominated in writing by them for the purpose, and all purchasers of rails, rolling stock, ties or other materials shall be made on account of said construction fund and in the name of said Trustees, so that such materials shall upon the purchase thereof become and continue subject to the lien of these presents.

Article 41. The payment of coupons upon bonds now or hereafter to be issued on the security of these presents not exceeding four coupons upon any one bond after its issue shall be considered as part of the expense of and chargeable to the construction of the railroad to

California until through connection is made with the system of the California Railroads so that cars can run between Portland and San Francisco and of the railroad to Astoria until the railroad is opened from Portland to tidewater at Astoria; and the construction of a railroad bridge across the Willamette at Portland so as to connect the railroads of said Company on each side of that river and any necessary or proper increases of depot and dock accommodation in or near Portland shall be considered part of the expenses of the railroad to California.

Article 42. At any time after but not before the 1st day of January, 1883, whenever said company shall have constructed any additional railroad beyond the 306½ miles hereinbefore described said company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole, including the bonds for six millions of dollars to be now issued the rate of $20,000 for each mile of constructed road, and shall deliver such bonds to said Trustees, who shall cause the constructed road to be carefully examined and measured by their supervising engineer, and if they shall receive from such engineer a certificate that the additional road is duly constructed and completed to the length of miles claimed, with all proper depots and equipment in proportion to the rest of the constructed road, they shall certify said bonds and hold the same as hereinbefore provided until sold by said company, and then deliver the same to the purchasers thereof upon receipt of the purchase money provided however that said Trus-

tees shall not be required to examine and certify bonds for less than ten miles of railroad at any time.

Article 43. All bonds to be hereafter issued as aforesaid shall be in the same form and payable in the same manner as the bonds to be now issued except that they shall bear the date when actually certified by said Trustees, and shall have all coupons of earlier date cut off, so as to bear interest only from the date when certified, and they shall all be consecutively numbered from 6,001 onwards and all such bonds when certified by said Trustees shall be in all respects equally secured by these presents with the 6000 bonds to be now issued.

Article 44. And whereas by reason of distance, lapse of time or other accident the dates of the actual execution of this indenture of mortgage and trust by the various parties thereto may be previous or subsequent to the day of which it bears date, now it is hereby expressly agreed and declared that this indenture of mortgage and trust shall be dated the first day of June, 1881, and shall be valid and effectual as if executed on the day of the date thereof, and that this indenture of mortgage and trust is the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

IN WITNESS WHEREOF, The Oregon and California Railroad Company, pursuant to a resolution

of its board of directors duly authorizing the same, has caused these presents and nineteen duplicates thereof to be sealed with its corporate seal, signed by its president and attested by its assistant secretary; and the said Trustees respectively have hereunto and unto the said nineteen duplicates thereof set their hands and seals the day and year above written.

Oregon and California Railroad Company,
By H. VILLARD, President.

(O. & C. R. R.) Attest: H. H. Tyndale,
(Corporate seal) Assistant Secretary.

(Seal) H. VILLARD,)
(Seal) HORACE WHITE,) Trustee
(Seal) C. E. BRETHERTON,)

Signed, sealed and delivered
in precence of:
Geo. A. Saxer,
C. A. Spofford,
20 Nassau St.
New York.

State of New York,)
) ss.
City and County of New York.)

Be it remembered that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a Commissioner of the State of Oregon in and for the State of New York, residing in said City of New York per-

sonally appeared Henry Villard, the President of the Oregon and California Railroad Company and Hector H. Tyndale, the Assistant Secretary of the same company to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he said Henry Villard resides in the City and State of New York; that he said Hector H. Tyndale also resides in said City of New York; that he, said Henry Villard is the president and he said Hector H. Tyndale is the Assistant Secreary of said Company; that they know the corporate seal of said company, that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the board of directors of said company, and they the said Henry Villard and Hector H. Tyndale signed their names thereto by the like order as President and Assistant Secretary of said company respectively to be their free and voluntary act and deed and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 27th day of July, A. D. 1881.

Charles Edgar Mills,

A Commissioner of Oregon in New York.

(Commissioners Seal)

State of New York,)
) ss.
City and County of)
New York.)

Be it remembered, that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the state of New York, residing in said City of New York, personally appeared Henry Villard, Horace White and Charles Edward Bretherton, Trustees in the foregoing deed of trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as Trustees and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal this 27th day of July A. D. 1881.

Charles Edgar Mills,
A Commissioner for Oregon in New York.

(Commissioners seal)

Recd. for Record Aug. 18, 1881,

oOo

Form M 44

STATE OF OREGON,)
) ss.
County of Multnomah,) No. 9556

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and

State of Oregon, do hereby certify that the foregoing copy of agreement, O. & C. R. R. Co. to Villard et al recorded in Book 27 page 1 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 8" day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk

DEFENDANT'S EXHIBIT 397

is a certified copy of mortgage executed June 2, 1881, by the Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles, and Charles Edward Bretherton, recorded page 179, Book 27, of Records of Mortgages, Multnomah county, Oregon, and thereafter, and about the same time, recorded in the Records of Mortgages of all other counties in which any part of said granted lands are situated, which said exhibit, is as follows:

THIS INDENTURE, made the second day of June, in the year One Thousand Eight Hundred and Eighty-one, Between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company), of the first part and Henry Villard of the

City and State of New York. Robert Davie Peebles, of London, in England, and Charles Edward Bretherton, of the City and State of New York, (hereinafter called the Trustees) of the second part.

WHEREAS, by an act of Congress "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California, to Portland in Oregon," and approved July 25th, 1866, it was amongst other things, enacted as follows: Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, "organized, under an act of the State of California to protect certain parties in and to a railroad survey" to connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company, organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized, empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California, in the manner following to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California; and running thence northerly, through the Sacramento and Shasta Valleys, to the

northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company, Provided that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other Company shall likewise have arrived at the same line shall have the right, and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this Act, until the said parts shall meet, and connect and the whole line of the said railroad and telegraph shall be completed.

"Section 2. And be it further enacted, that there be and hereby is granted to the said Companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mails, troops, munitions of War, and public stores over the line of said railroad, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been

granted, sold, reserved, occupied, by homestead, settlers, pre empted or otherwise disposed of, other lands designated as aforesaid, shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections, designated by odd numbers as aforesaid nearest to, and not more than ten miles beyond the limits of the said first named alternate sections; and as soon as the said Companies, or either of them shall file in the office of the Secretary of the Interior, a map of the survey of said railroad or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified." The lands herein granted shall be applied to the building of said road within the States respectively wherein they are situated, and the Sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of Public lands when sold. Provided, That bona fide and actual settlers under the preemption laws of the United States May, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided also, that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not ex-

ceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding."

Section 3. And be it fruther enacted, That the right of way through the public lands be and the same is hereby granted to said Companies for the construction of said railroad and telegraph line; and the right power and authority are hereby given to said Companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operation of said road."

AND WHEREAS, by an other Act of Congress, entitled "An Act granting lands to aid in the Construction of a railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," and approved May 4, 1870, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junction near Forest Grove to the Yamhill River

near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in contsructing the said road, and to their successors and assigns, the right of way through the public land of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands, materials for constructing said road, and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands not mineral excepting coal or iron lands designated by odd numbers, nearest to the said road, to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this act, and in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

AND WHEREAS, Said Oregon and California Railroad Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, rights, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore entitled Act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore

recited Act of Congress, and there has been already accepted and approved by the United States, as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company, situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph, 47 miles in length, and the Company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph authorized by and specified in said acts of Congress.

AND WHEREAS, Said Oregon and California Railroad Company, by an indenture dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, mortgaged to Faxon D. Atherton and Milton S. Latham, all its railroad from Portland to the boundary line of the State of Oregon and California then constructed and thereafter to be constructed, with its equipments and appurtenances, and all its property except it-s Congressional land grant, upon the terms and conditions therein mentioned, to secure and issue of eighteen thousand four hundred and fifty mortgage bonds of the said Company, amounting to the sum of ten millions nine hundred and fifty thousand dollars, and interest thereon as evidenced by interest warrants or coupons thereto annexed, all which bonds were duly negotiated and issued."

AND WHEREAS, by another indenture also

dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, said Company granted and conveyed to the said Milton S. Latham, Faxon D. Atherton and William Norris, all the lands granted and to be granted by the United States to aid in the construction of said railroad upon trusts as therein provided for the sale of such lands, and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of said issue of ten millions nine hundred and fifty thousand dollars, in amount of the first mortgage bonds of said Company.

AND WHEREAS, Said Company having made default of the interest upon said bonds, the holders thereof formed and organized themselves into an association called the Association of Holders of the Oregon and California Railroad Seven Per Cent First Mortgage Bonds" having its office and legal domicile at Frankfort on the Main, in Germany, and such association became the holder of all said bonds.

AND WHEREAS, By a plan of reorganization of said Oregon and California Railroad Company, adopted by an extraordinary general meeting of said Association on the 5th day of May, 1881, and adopted and ratified by a special meeting of the stock holders of said Company on the 7th day of May, 1881, it was resolved and agreed that the holders of said bonds should receive payment thereof in a new issue of preferred stock of said Company of the amount and of the character and

and that the performance of the conditions upon which said preferred stock should be subscribed and issued should be secured by a deed of trust or security to said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, in the manner provided and effected by these presents.

AND WHEREAS, in pursuance of further provisions of said plan of reorganization by a deed of Mortgage and trust dated the first day of June, 1881, the Company mortgaged its railroads, lands, and all other property, present and future, to Henry Villard, Horace White and Charles Edward Bretherton, to secure an immediate issue of 6,000 first mortgage bonds, for the aggregate of six million dollars in gold coin, bearing interest at the rate of six per cent per annum, payable half-yearly, on the first days of January and July, and redeemable at 110 per cent of the par value thereof, in manner in said bonds and mortgage specified, all of which 6000 bonds have been issued and are now outstanding, and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of $20,000 for each mile of road now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said deed of Mortgage and trust."

AND WHEREAS, the said Company in pursuance to its articles of incorporation and by laws and of said plan of reorganization of the Company approved and ratified by the special meeting of its stockholders

held on the 7th day of May, 1881, has made an issue of preferred stock, twelve million dollars in amount of twelve thousand shares of one hundred dollars each, all of which stock has been subscribed and issued upon the following conditions namely:

I. The preferred stock is entitled to a preferential dividend, not cumulative of seven per cent per annum, payable out of the net earnings of the Company, and, after the first mortgage bonds hereinafter specified have been paid off, out of the gross proceeds of the land grants.

II. Net earnings mean the surplus of the gross earnings of the railroad after the deductions only of all operating and management expenses, repairs, necessary increase of rolling stock and equipment, taxes and the interest and sinking fund payments upon the first Mortgage bonds secured by, and now or hereafter issued under the provisions of the deed of Mortgage and trust, dated June 1st, 1881, and made by the Company to Henry Villard, Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year, after the common stock has received seven per cent in such year.

IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above

specified, shall be distributed exclusively among the preferred stockholders.

V. The dividend on the preferred stock, realized from the proceeds of the lands as above defined shall diminish, pro tanto, the preferential right of the preferred stock to dividends out of the net earnings of the road, as against the common stock, but in no case shall any part of the land-proceeds, as above defined, be distributed among the common stock.

VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st day of December and the dividend shall be declared at or before the annual meeting in the following April.

VII. On any dissolution of the Company, the preferred stock shall be refunded in full, before anything is refunded to the common stock.

VIII. No sale, disposition, incumbrance or lease of the railroad or any part of it, nor any mortgage or issue of bonds, except the first mortgage bonds at the rate of $20,000 a mile hereinbefore specified, nor any operating traffic or running contract in the nature of a lease, or which shall transfer the management or operation of the road, or any part of it, to another Company, nor any consolidation with another Company, nor, any lease of the railroad of another Company, nor any guarantee or assumption of the liabilities of any other Company for bonds, coupons, dividends, or other-

wise, nor any supplementary articles of incorporation of the Company, nor any increase of the preferred or common stock, shall be made, or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding, nor shall the Pacific Extension be undertaken without such consent.

IX. The dividends on the preferred stock for the years 1881 and 1882, not exceeding eight per cent in all may be paid in script, convertible into preferred stock instead of in cash.

AND WHEREAS, In further pursuance of said plan of reorganization, it has been resolved and agreed between the said Company and the said Trustees, that the ownership of all the shares of said preferred stock so issued and entitled to the security of these presents, shall be evidenced by certificates issued by said Company, and referring to these presents and upon which certificates the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth shall be endorsed and otherwise in such form as said Company and said Trustees shall from time to time determine but which certificates shall only be valid when countersigned by, and registered with some respectable bank or trust Company in New York, London and Frankfort-on-the-Main, from time to time agreed upon and appointed in writing by said Trustees and said Company, as Registrars of said preferred stock.

AND WHEREAS, The Farmers Loan and Trust

Company in New York, the London and San Francisco Bank, limited, in London, and the Deutsche Vereinsbank, in Frankfort-on-the-Main, have been so agreed upon and appointed as Registrars of said preferred stock.

NOW, THIS INDENTURE WITNESSETH: That in pursuance of said resolutions and agreements, and of said plan of reorganization, and to secure the performance of the conditions upon which said preferred stock has been subscribed and issued, as aforesaid, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg and between Portland and Corvallis and Albany and Lebanon, in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad in all about three hundred and six and one half (306½) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Oregon, together with the ferry, ferry-boats and landings connecting the said railroads at Portland and East Portland, and also all the railroads of said Oregon and California Railroad Company to be hereafter con-

structed. That is to say, the Pacific Extension thereof, from Forrest Grove to Astoria, in accordance with the Act of Congress of May 4, 1870, hereinbefore recited, and the line from Corvallis to Junction and the Southern Extension thereof from Roseburg to California, to a junction with the Central Pacific Railroad in accordance with the act of Congress of July 25, 1866, hereinbefore recited, and also all lands, rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads, or for grounds, sidetracks, depots, warehouses, tanks, round-houses, stock-yards—or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroad already completed between the termini aforesaid, and not yet sold estimated to be in amount of about one million nine hundred thousand acres, and all other lands now or which may be hereafter granted to said Company by the United States, and which lands are intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and also together with all rails, spikes, ties, timber, iron, switches, frogs, depots, warehouses, round-houses, machine shops, bridges, trestle work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively, including all the offices, docks and ware-houses of the Company in Portland and East Portland, or elsewhere, and all lomocotions, cars and other rolling stock, railroad supplies,

fuel, tools and machinery now used, or which may hereafter be used in, or provided for the maintenance or operation of said railroads and telegraph lines and other appurtenances of said railroads, and the franchises to operate same, and all the income, earnings and profits of said railroads, lands, premises and all other present and future property of every description, of said Oregon and California Railroad Company.

TO HAVE AND TO HOLD, the said railroads, lands, rolling stock equipment, premises and property unto the use of said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors as trustees of these presents as joint tenants, and not as tenants in common, free from all prior liens and encumbrances whatever, (except the prior lien created by the said deed of mortgage and trust to Henry Villard, Horace White and Charles Edward Bretherton, in favor of the first mortgage bonds now issued or which may be hereafter issued, upon the security of said deed of Mortgage and Trust as hereinbefore specified, in trust nevertheless, for the equal benefit and security, pro rata, of every holder of the preferred stock of said Company duly registered as aforesaid, with one of the registrars of said preferred stock and now issued, or which may be hereafter issued, in pursuance of the provisions of these presents, and intended to be secured hereby, without any priority of any one holder over another, by reason of *erlier* issue, or otherwise and for the uses and purposes and with the rights and powers and subject to the provisions, agreements,

covenants and stipulations contained in the following articles, that is to say:

ARTICLE 1. The said Oregon and California Railroad Company hereby covenants with the said Trustees that it will forever duly and faithfully perform each and all the conditions upon which said preferred stock has been subscribed and issued as hereinbefore recited.

ARTICLE 2. And fruther, that if any such conditions shall be violated or broken and such breach or violation shall continue for six calendar months, then said Trustees shall by notice in writing left at the office of the Company in Portland, cancel the subscription of all the preferred stock, and thereupon the said Company shall and will forthwith pay, on demand, at the office of the Company in Portland, to every holder of preferred stock, upon presentation of his certificate, the sum of one hundred dollars for each share held by him.

ARTICLE 3. Until the breach of some condition hereby covenanted to be performed, as aforesaid, said Company shall freely possess the said railroads lands and premises and the income, earnings and profits thereof, and may contract to sell and sell and dispose of the lands granted by the United States and of all other lands owned by the Company, not required for the maintenance and operation of its railroads; but when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, no such sale, nor any conveyance or release of said lands, or any of them shall be valid and effectual unless such sale be at a price approved

by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees, or one of them, or by their attorney or attorneys in fact thereunto, lawfully authorized. And for the purpose of facilitating such sales, when and after all said first mortage bonds hereinbefore referred to shall have been paid off, said Trustees may from time to time, either concur with said Company in appointing an agent to make such sales and execute such releases and conveyances as their attorney in fact, or may appoint an agent of their own to supervise and join in such sales and to execute such releases and conveyances as their attorney in fact, and they may delegate to any such agent all their power and duties in respect to the sale of lands, except the custody of the proceeds thereof.

ARTICLE 4. Said Trustees shall hold the said proceeds of all lands sold, after all such first mortgage bonds hereinbefore referred to shall have been paid off, upon trust, to distribute the same as dividend upon the preferred stock in conformity with the conditions thereof.

ARTICLE 5. In case said Company shall fail to perform and keep any condition upon which said preferred stock is subscribed and issued, as hereinbefore set forth, it shall be lawful for said Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed or which may be then subject to the lien of these presents and to operate the

said railroads and manage the same, and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold; and said Company covenants and agrees that it will on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises, without interruption or disturbance, and will permit and suffer said Trustees to collect and get in all freight moneys, ticket balances or other earnings, and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary, or may be deemed advisable by said Trustees to take legal proceedings for dissolution of said Company or for cancellation of the subscription of the preferred stock, or enforcement of the covenants, stipulations, or trusts, of these presents or to obtain possession of said premises, in pursuance of the provisions of this article, they shall be entitled to the appointment, by the Court in which such legal proceedings are instituted, of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

ARTICLE 6. Said Trustees, when in possession of said railroads, lands and premises shall have the right as irrevocable attorney or attorneys of said Company to bring or defend in the name of the said Company, any action for the collection of income, freight moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the possession of any property subject to the lien or trusts

of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

ARTICLE 7. Said Trustees are hereby authorized, in their discretion, to accept possession of said railroads, with the rolling stock, lands and appurtenances herein comprised, although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same, and collect the income and earnings thereof, as hereinafter provided.

ARTICLE 8. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such breach as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said preferred stock.

ARTICLE 9. Said Trustees shall have full power, from time to time for the purpose of enforcing and administering the trusts and powers of these presents, and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants as they shall deem necessary or useful, and to defray all expenses of such employment and of otherwise executing the trusts of these presents, and to pay any taxes assessed upon the trust premises or any part thereof or any other prior charges thereon,

out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands, and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not), the amount so paid, together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises, and the earnings, income and proceeds thereof; and in case said Company shall fail on demand, to repay said Trustees any amount paid by them, as aforesaid, with interest at the rate aforesaid, they may enter upon and take possession of said railroads lands and premises, and retain possession and receive the income, earnings and proceeds thereof, until they shall have recouped themselves the amount so paid, with interest as aforesaid.

ARTICLE 10. In case the Company shall, after cancellation of the subscription of the preferred stock in manner provided in article 2 of these presents, make default in payment to any holder of preferred stock of the sum payable to him under the provisions of said Article, it shall be the duty of said Trustees to forthwith proceed to enforce this security, and to sell said railroads, rolling stock, equipment and appurtenances, and the land and premises comprised herein, or then subject to the lien of these presents, in one lot, or in more than one lot or parcel, and at one time, or at different times, and for cash, or on reasonable credit, payment therefor being secured on the property sold, and other-

wise upon such terms and in such manner as said Trustees may in their discretion think best.

ARTICLE 11. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald, or in case said paper shall not be then published, then in some other daily paper of general cilculation published in New York, and selected by said Trustees; and in case said sale shall be adjourned, the like four weeks notice shall be given of the adjourned sale; or at the option of said Trustees such sale may be made judicially by action or suit brought by said Trustees for the enforcement of the lien and powers of sale hereby created and granted, or the enforcement, performance or administration of the covenants, powers, stipulations and trusts of these presents, as said Trustees may deem most expedient.

ARTICLE 12. The moneys received from the net earnings of said railroads or the purchase moneys, received on any such sale thereof, as hereinbefore provided, or the purchase moneys received for lands sold, when in possession of said Trustees, shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts of these presents, and the management and operation of said railroad, and in the protection and preservation of

the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of debts and liabilities incurred by said Company otherwise than by or in or through the breach of any of the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth; and lastly, in payment to every holder of said preferred stock of the sum of one hundred dollars for each share of preferred stock held by him, or a proportionate part thereof in case such moneys shall be insufficient to pay the full amount; and the surplus, if any, of such moneys shall be refunded to said Company.

ARTICLE 13. On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser, all the title and interest of said Company as fully and effectually as if the Company were party thereto.

ARTICLE 14. The Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of said preferred stock, that it will, from time to time, and at all times hereafter, upon reasonable request, make, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors, from time to time

as Trustees of these presents upon the trusts and for the purposes herein expressed, the said railroads, rolling stock, equipment, lands and premises herein comprised, free from all prior liens and encumbrances, except as herein specified and all other present and future property of said Company of every kind and descripiton as by the said Trustees or their counsel learned in the law shall be reasonably devised, advised or required, and will, from time to time, as the said lands, now or hereafter granted by the United States are patented to said Company, execute proper deeds of further assurance thereof to said Trustees so as to fully identify the lands intended to be comprised in or subjected to the lien of these presents.

ARTICLE 15. All rights or powers by these presents given to, or covenants, stipulations or agreements made with said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

ARTICLE 16. In these presents, the word "Trustees" shall be held to mean the said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, while continuing to be Trustees hereof, and the trustees for the time being of these presents, whether all or any be original Trustees or new Trustees.

ARTICLE 17. No Trustees shall be in any man-

ner responsible for any act, default or misconduct of his co-Trustees, nor for that of any Agent, Bank, Banker, Broker or other persons employed by him or by his co-Trustees, unless he shall be chargeable with culpable negligence in their selection or in the continuance of their employment, nor otherwise, except for his own wilful default, misconduct or gross negligence. But except as herein specially authorized, no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee, or to any other person whatever.

ARTICLE 18. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust, and said Trustees shall be paid by said Company or, in default, out of the trust moneys, the sum of five hundred dollars per annum each, and in addition a further reasonable compensation for such services as they may be called upon to render in taking possession of and managing the premises or selling the same, or bringing suit for the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by or becoming payable by virtue of these presents.

ARTICLE 19. In case of the death, resignation or refusal or incapacity to act of any Trustee, the surviving or continuing Trustee or Trustees shall by deed appoint a suitable person as Trustee in the place or stead of the

Trustees so dying, resigning, refusing or becoming incapable; and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee shall *shall* fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co Trustee to apponit a new Trustee, then said Company, or any holder of said preferred stock may apply to any judge in the Circuit of the United States for the District of Oregon, to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or other legal proceedings therefor; but in no case, shall a citizen of the State of Oregon be appointed, or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the Courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the Courts of the State.

ARTICLE 20. A majority in amount of the holders of the said preferred stock shall have full power at any time without suit, and whether there be any vacancy or not, to remove all or any of the then existing Trustees and to appoint other Trustees, or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the Trustees or as sole Trustee; and any such act of the majority in amount of the holders of preferred

stock shall be deemed to be sufficiently made, executed, evidenced and proved by a writetn instrument or instruments purporting to be signed by the actual holders of the certificates for such preferred stock, whether they shall be registered in the names of such persons on the books of the Company or not, provided that each such certificate shall be either in the name of such holder or transferrable by him as attorney of the holder named in the certificate, and stating the identifying numbers of the certificates of the shares of such stock and the amount of such shares held by each signatary, and the respective signatures to which, and the production to a notary public at the time of signature of the certificates specified, shall be acknowledged before and certified by such Notary Public and his certificate attached and authenticated by his Notarial Seal. No proof shall be necessary of the qualifications of any such Notary so purporting to act in the United States, the British Dominions, Holland, France, or the German Empire.

ARTICLE 21. Any appointment of a new Trustee made by the surviving or continuing Trustees or or Trustee, or the majority of the holders of preferred stock, or a judge, as hereinbefore provided, shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee, party to these presents without any new deed or conveyance, but nevertheless, the said Company hereby covenants in any and every such case to make, upon request of the new Trustees or Trustee, all such deeds, conveyances and

assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties and every resigning Trustee shall, on like request, make and execute such deeds, conveyances and assurances to his successors or successor.

ARTICLE 22. A majority in amount of the holders of the preferred stock at any time secured by these presents may, by written instrument, to be executed and proved as provided in Article 28, at any time before the cancellation of the subscription for the preferred stock, as hereinbefore provided, waive any breach of any condition upon which said preferred stock is subscribed and issued, but such waiver shall be of no effect unless such breach shall have consisted in some act or omission which a majority in amount of the holders of said preferred stock might have previously authorized, or unless such breach shall have consisted in the non-payment of any dividend, and the Company shall together with such instrument or instruments of waiver, hand to the Trustees a sum of money sufficient to pay all such dividend then in arrear, and in the case last mentioned said Trustees shall proceed to pay said dividend as nearly as possible in the manner provided by these presents.

ARTICLE 23. The said Company, for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay, appraisement or redemption laws,

or laws requiring liens or deeds of trust to be foreclosed or enforced by action or suit, and of all other laws now existing or hereafter passed, which, but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by a Trustee without suit; and on any such sale said Company, for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser.

ARTICLE 24. In case of any sale of said premises whether by the Trustees of by a Court, any purchasers shall be entitled to deliver, in part payment of the purchase money any of the certificates for preferred stock secured by these presents; and such certificates shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previously by the Trustees of the Court as the case may be, and announced in the advertisement of sale.

ARTICLE 25. The Trustees shall, whenever requested by the Company, release from the lien of these presents, any land, rolling stock, or other property become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise.

ARTICLE 26. On any sale, whether by the Trustees or a Court of the property hereby conveyed, or any part thereof, The Trustees shall have the right to buy

in the same, and a majority in amount of the holders of the preferred stock shall have the right by written instrument, evidenced and proved as hereinbefore provided by Article 28, to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold on behalf and for the benefit of such holders of preferred stock, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the Court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents, and of the proportion of such sum payable to the holders of preferred stock not concurring in such request.

ARTICLE 27. On any such purchase the trustees shall hold the property so purchased upon trust for the equal benefit of the holders of preferred stock, who had required the Trustees to buy in the property on their behalf, as the absolute property of said holders of preferred stock, without any right of redemption or resale in favor of said Company or any other holders of preferred stock.

ARTICLE 28. The Trustees shall deposit all trust funds which may from time to time, come to their hands in their joint names, in the London and San Francisco Bank Limited or such other respectable bank or banks, trust Company or Trust Companies, in London, New York, Frankfort, San Francisco or Portland, as they may, from time to time agree upon, and may from time to time invest the same, until required in the pur-

chase of United States Stocks or Bonds at their market value, or in the first mortgage bonds of the Company, at any price not exceeding the par value thereof, or on loans secured on such stocks or bonds.

ARTICLE 29. In computing the majority of the amount of the holders of preferred stock hereinbefore referred to, only the stock actually issued and outstanding shall count, and not any stock belonging to the Company or reserved for the conversion of the issue of income bonds in said plan of reorganization mentioned.

ARTICLE 30. AND WHEREAS, by reason of distance, lapse of time, or other accident, the dates of the actual execution of this Indenture of Trust, by the various parties thereto, may be previous or subsequent to the day of which it bears date, Now it is hereby expressly agreed and declared that this Indenture of Trust shall be dated the second day of June, 1881, and shall be valid and effectual as if executed on the day and date thereof, and that this Indenture of Trust is the Indenture referred to in the certificates for preferred stock hereinbefore mentioned, and is made and executed by and between the parties hereto as and for the Indenture or Deed of Trust securing and intended to secure, the performance of the conditions on which said preferred stock is subscribed and issued;

IN WITNESS WHEREOF, The said Oregon and California Railroad Company pursuant to a resolution of its Board of Directors, duly authorizing the

same, has caused these presents and nineteen duplicates hereof to be sealed with its corporate seal, signed by its president, and attested by its Assistant Secretary; and the said Trustees respectively have hereunto, and unto the said nineteen duplicates hereof, set their hands and seals the day and year above written.

OREGON AND CALIFORNIA RAILROAD COMPANY,

By H. Villard,—President.
Attest: H. H. Tyndale. Assistant Secretary.

(O. & C. R. R. CORPORATE SEAL.)

H. Villard,)
R. D. Peebles,) TRUSTEES.
C. E. Bretherton.)

Signed, sealed, and
delivered in presence of
Geo A. Saxer as to (H. Villard)
Sydney Starbuck, (C. E. Bretherton).
Signed, Sealed and delivered by Robert
Davie Peebles, in presence of
James Davis,
S. Jackson,
22 Old Broad Street, London.

STATE OF NEW YORK,)
(ss.
City and County of New York.)

BE IT REMEMBERED, that on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard, the President of the Oregon and California Railroad Company, and Hector H. Tyndale, the Assistant Secretary of the same Company, to me respectively personally known to be such, who being by me severally duly sworn, did repose and say, that he, said Henry Villard resides in the City and State of New York; that he, said Hector H. Tyndale. also resides in said City of New York; that he, said Henry Villard is the president and he, said Hector H. Tyndale is the assistant secretary of said Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company; and that they, the said Henry Villard and Hector H. Tyndale, signed their names thereto by the like order, as President and Assistant Secretary of said Company respectively, and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(COMMISSIONERS SEAL)

STATE OF NEW YORK,)
) ss.
City and County of New York,)

BE IT REMEMBERED, That on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard and Charles Edward Bretherton, Trustees in the foregoing deed of Trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as trustees, and they severally acknowledged to me that they executed the same freely and voluntarily, as their act and deed, for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL, this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(COMMISSIONERS SEAL)

CONSULATE GENERAL

of

THE UNITED STATES OF AMERICA

for

GREAT BRITAIN and IRELAND, LONDON.

On this 17th day of August, 1881, before me, Adam Badeau, Consul General and ex-officio a Notary Public of the United States of America at London, England, personally appeared Robert Davie Peebles, to me known to be the person of that name described in and who has executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein contained.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official Notarial Seal, at London, aforesaid, the day and year above written.

ADAM BADEAU,

(U. S. CONSULATE SEAL) Consul General,
U. S. A., London.

STATE OF OREGON,)
) ss.
County of Multnomah,) No. 9574

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement Oregon and California Railroad

Company to Henry Villard et al, recorded in Book 27 page 179 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May A. D. 1913.

(Seal) JNO. B. COFFEY, County Clerk.
Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 398

is a certified copy of mortgage executed by the Oregon and California Railroad Company to The Farmers Loan and Trust Company, May 25, 1883, recorded page 33, Book 41, Records of Mortgages of Multnomah County, Oregon, on November 5, 1883, and recorded about the same time in the Records of mortgages of all other counties in which any part of said granted lands were situated, which said exhibit, is as follows:

This indenture made the 25th day of May in the year one thousand eight hundred and eighty three between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the

first part: The Farmers Loan and Trust Company of the City and State of New York) hereinafter called the Trustee) of the second part and Robert Davie Peebles George Henry Hopkinson and Patrick Buchan of the third part.

Whereas By an Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon" and approved July 25, 1866, it was amongst other things enacted as follows "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That the "California and Oregon Railroad Company" Organized under an act of the State of California to protect certain parties in and to a railroad survey "to connect Portland in Oregon with Marysville in California" approved April 6, 1863. a-nd such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized and empowered to lay out locate, construct finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California in the Manner following towit:

The said California and Oregon Railroad Company to construct that part of the said Railroad and telegraph (line) within the State of California beginning at some point(to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley in

the State of California and running thence northerly through the Sacramento and Shasta Valleys to the Northern Boundary of the State of California and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon beginning at the City of Portland in Oregon and running thence southerly through the Willamette Umpqua and Rogue river valleys to the southern boundary of Oregon where the same shall connect with the part aforesaid to be made by the first named Company Provided that the Company completing its respective part of the said railroad and telegraph (line) from either of the termine herein named to the line between California and Oregon before the other Company shall have likewise arrived at the same line shall have the right and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie upon the terms mentioned in the act until the said parts shall meet and connect and the whole line of the said railroad and telegraph (line) shall be completed"

"Section 2 And be)it) further enacted. That there be and hereby is granted to the said companies their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad every alternate section of public land. not mineral designated by odd numbers to the

amount of twenty alternate sections per mile) ten on each side) of said Railroad line and when any of said alternate sections or parts of sections shall be found to have been granted sold reserved occupied by homestead settlers pre-empted or otherwise disposed of other lands, designated as aforesaid shall be selected by said companies in lieu thereof under the direction of the Secretary of the Interior in alternate sections designated by odd numbers as aforesaid nearest to and not more than ten miles beyond the limits of said first named alternate sections and as soon as the said companies or either of them shall file in the office of the Secretary of Interior a map of the survey of said railroad or any portion thereof not les than sixty continuous miles from either terminus the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad so far as located and within the limits specified. The lands herein granted shall be applied to the building of said road within the states respectively wherein they are situated, And the sections and parts of sections of lands which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided that bona fide actual settlers under the pre-emption laws of the United States may after due proof of settlement improvements and occupation as now provided by law purchase the same at the price fixed for said lands at the date of such settlement improvement and occupation. And provided also That settlers under the provisions of the homestead

act, who comply with the terms and requirements of said act shall be entitled within the limits of said grant to patents for an amount not exceeding eighty acres of the land so reserved by the United State anything in this act to the contrary notwithstanding."

Section 3 And be it further enacted. That the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth stone timber water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations buildings workshops depots machine shops switches side tracks turn tables water stations or any other structures required in the construction and operating of said road"

And whereas By another act of Congress entitled " An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and approved May 4, 1870 it was amongst other things enacted as follows " Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junc-

tion near Forest Grove to the Yamhill river near McMinnville in the State of Oregon there is hereby granted to the Oregon Central Railroad Comapny now engaged in constructing the said road and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from adjacent public lands materials for constructing said road and also the necessary lands for depots. stations side tracks and other needful uses in operating the road not exceeding forty acres at any one place and also each alternate section of the public lands not mineral, excepting coal or iron lands designated by odd numbers nearest to the said road to the amount of ten such alternate sections per mile, on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be formed on each side of said road. Within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency."

And whereas said Oregon and California Railroad Company has succeeded to and become invested with and now is possessed of and entitled to all the grants, rights franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited Act of Congress and of the Oregon Central Rail-

road Company mentioned in the secondly hereinbefore recited act of Congress And whereas By a Deed of Mortgage and Trust dated the first day of June 1881 the Company mortgaged its railroads, lands and all other property present and future to Henry Villard, Horace White and Charles Edward Bretherton their heirs assigns and legal successors as trustees to secure an immediate issue of 6,000 First Mortgage Bonds for the aggregate amount of Six Million dollars in gold coin bearing interest at the rate of six per cent per annum payable half yearly on the first days of January and July and redeemable at 110 per cent of the par value thereof in manner in said bonds and mortgage specified all of which 6,000 bonds have been issued and are now outstanding and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of $20,000 for each mile of railroad now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said Deed of Mortgage and Trust.

And whereas The said Company has heretofore issued its preferred stock twelve million dollars in amount in one hundred and twenty thousand shares of one hundred dollars each. All of which stock is fully paid and was subscribed and issued upon the following conditions namely;

"I. The preferred stock is entitled to a preferential dividend not cumulative of seven per cent per annum payable out of the net earnings of the Company

and after the first mortgage bonds hereinafter specified have been paid off out of the gross proceeds of the land grants.

"II. Net earnings names the surplus of the gross earnings of the railroad after the deduction only of all operating and management expenses. repairs necessary increase of *railling* stock and equipment, taxes and the interest and sinking fund payments upon the first mortgage bonds secured by and now or hereafter issued under the provisions of the Deed of Mortgage and Trust. dated June 1, 1881. and made by the Company to Henry Villard Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year after the common stock has received seven per cent in such year/

"IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above specified shall be distributed exclusively among the preferred stock holders.

"V. The dividend on the preferred stock realized from the proceeds of the lands as above defined shall dimish pro tanto the preferential right of the preferred stock to dividends out of the net earnings of the road as against the common stock but in no case shall any part of the land proceeds as above defined be distributed among the common stock.

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DEFENDANTS' EXHIBIT 322

Tables enclosed to J. B. Eddy, Tax and Right of Way Agent, in letter from E. Dana Durand, Director Bureau of the Census, dated August 26, 1912,—not printed but certified up under order of Court and stipulation of parties,—which tables give statistics of population Oregon 1850 to 1900, both inclusive, and population of certain cities and towns in western Oregon for 1910.....7252

DEFENDANTS' EXHIBIT 323

Population of certain counties and towns in western Oregon for years 1890, 1900, 1910.....7259

DEFENDANTS' EXHIBITS 324, 325, 326, 327, 328, 329, 330

Statements purporting to be summaries of the assessment rolls of the various counties of the state of Oregon as equalized by the County Board of Equalization, compiled by the Board

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of State Tax Commissioners for 1911, 1910, 1909, and compiled by the Secretary of State for 1908, 1907, 1906, 1904, 1903, 1902, 1901, 1900, showing by counties number of acres tillable land, value of non-tillable lands, value of town and city lots, improvements on town and city lots, etc., and showing total value of taxable property as equalized by the County Boards of Equalization for the respective years, and as equalized by the State Tax Commissioners for the years 1911, 1910 and 1909.....7262

DEFENDANTS' EXHIBIT 331

Purports to be statement of taxes paid upon congressional lands, including in same items other property for years 1873 to 1890, both inclusive, in the counties of Benton, Lane, Linn, Marion, Washington and Yamhill.....7263

DEFENDANTS' EXHIBIT 332

Purports to be two sheets of standard map of the Oregon and California Railroad Company, purporting to show lands of the Booth-Kelly Lumber Company colored in red, and the Wentworth lands colored in green.....7268

DEFENDANTS' EXHIBIT 333

Is a certified copy of an Act of Congress, ap-

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proved August 20, 1912, entitled "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,'" etc.....7268

DEFENDANTS' EXHIBIT 334

Is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," Oregon and California Railroad Land Grant, July 16, 1912—committed to the committee of the whole House on the state of the Union, and ordered to be printed. Mr. Robinson, from the Committee on Public Lands, submitted same to accompany H. R. 22002, supplementing the joint resolution approved April 30, 1908, etc.....7273

DEFENDANTS' EXHIBIT 335

Purports to be a map issued by Department of the Interior, General Land Office, Fred Dennett, Commissioner, State of Oregon, compiled from the official records of the General Land Office and other sources, etc., showing thereon, in accordance with legend as marked in different colors, U. S. Surveyor General's Office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National

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Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries, Military Roads, Light Houses, and Townships not subdivided by special designation 7303

DEFENDANTS' EXHIBIT 336

Is Department Circular No. 62, October 29, 1907, issued by Treasury Department, subject "Transportation of Government Employees and Property" 7303

DEFENDANTS' EXHIBIT 337

Is Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-grant and Bond-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912, Washington, Government Printing Office, 1912." At page 42 of this circular appears Section 5, Act of July 25, 1866, 14 Statutes, 239, with reference to Act of June 25, 1868, 15 Statutes, 80, and Act of Congress April 19, 1869, with reference to 16 Statutes, 47; and therewith a map of Land-grant and Bond-aided railroads of the United States, 1912, etc. 7306

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DEFENDANTS' EXHIBIT 338

Consists of a set of forms furnished by the Quartermaster Department as Government requests for transportation, etc. 7306

DEFENDANTS' EXHIBIT 339

Purports to be a standard map of the Oregon and California Railroad Company in the State of Oregon, and purports to show, according to legend, in colors, vacant government land; lands included in Forest Reserve withdrawn from entry; lands included in Powersite Reserve withdrawn from entry; lands included in Fisheries Bureau withdrawn from entry; lands included in Indian Reservation withdrawn from entry; shown in their relations to the lands within the limits of the grants, place and indemnity 7306

DEFENDANTS' EXHIBIT 340

Estimated acreage of public lands in the Portland and Roseburg, Oregon, land districts....7308

DEFENDANTS' EXHIBIT 341

Purports to be a summary showing stockholders, directors and officers of the Oregon and California Railroad Company, as shown by the

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record books of the Company from October 11, 1870, down to and including April 11, 1911 7309

DEFENDANTS' EXHIBIT 342

Is a standard map of the Oregon and California Railroad Company, purporting to show, in colors, lands examined, cruised, and reported upon by S. C. Bruce, S. A. Carmichael, C. A. Cavell, F. J. Cronin, F. A. Elliott, M. F. McCown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, Wm. Penoyar, and A. W. Rees; and purports to show the location of these lands within the limits of these grants. 7309

DEFENDANTS' EXHIBIT 343

Is a detailed statement purporting to show lands cruised by S. C. Bruce, as classified, present condition as to timber, grazing and agricultural, and when denuded—as to grazing and agricultural 7309

DEFENDANTS' EXHIBIT 344

Is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agricultural, and when denuded—as to grazing and agricultural 7310

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DEFENDANTS' EXHIBIT 345

Is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' in the National Forests", and reprinted in the Congressional Record on August 16, 1912, under the same heading as "Extension of Remarks of Honorable William Kent of California in the House of Representatives" 7310

DEFENDANTS' EXHIBIT 346

Is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service —Henry S. Graves, Forester; Subject, "Properties and Uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir", and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.....7341

DEFENDANTS' EXHIBIT 347

Is Circular 150, issued January 23, 1909, by U. S.

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Department of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," etc. Page 18 of circular purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade range 7842

DEFENDANTS' EXHIBIT 348

Is a circular or bulletin by the Department of Commerce and Labor, Bureau of the Census, Forest Products, No. 2, Lumber, Lath and Shingles—1910, etc., Forest Service, Henry S. Graves, Forester, issued February 20, 1912. Part of this exhibit is printed in testimony of Homer D. Angell, volume 6, page 2795 of record 7842

DEFENDANTS' EXHIBIT 349

Consists of silvical leaflets, numbers 2, 4, 5, 7 and 8, issued in 1907, Gifford Pinchot, Forester, describing Port Orford cedar, White Fir, Lowland Fir, Noble Fir, Red Fir (range and occurrence of each) 7843

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DEFENDANTS' EXHIBIT 350

Purports to contain reports of Land Examiner W. J. Lander of dates March 14, 1912, November 25, 1911, October 6 and 7, 1907, May 24, 1907, May 25, 1907, upon forms of Oregon and California Railroad Company, Land Department 7843

DEFENDANTS' EXHIBIT 351

Statement of lands examined, cruised and reported upon by D. C. McLennan, showing present condition, timber, grazing and agricultural and when denuded—grazing and agricultural 7843

DEFENDANTS' EXHIBIT 352

Table showing unsold Congressional lands of the Oregon and California Railroad Company as assessed and taxed, as shown by tax rolls of Multnomah County for the years 1875 to 1890, both inclusive 7843

DEFENDANTS' EXHIBIT 353

Statement of lands examined, cruised and reported upon by A. W. Rees, showing acreage of, in present condition, classified as timber, grazing

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and agricultural, and, when denuded—grazing and agricultural 7845

DEFENDANTS' EXHIBIT 354

Report of A. W. Rees, timber cruiser; 3 sheets showing timber estimate and description of various parcels of lands 7845

DEFENDANTS' EXHIBIT 355

Statement of portion of lands examined, cruised and reported upon by F. A. Elliott showing area in present condition, timber, grazing and agricultural, and, when denuded—grazing and agricultural 7845

DEFENDANTS' EXHIBIT 356

Statement of lands examined by S. A. Carmichael, showing area in present condition, timber, grazing and agricultural, and when denuded—grazing and agricultural 7845

DEFENDANTS' EXHIBIT 357

Statement showing lands examined, cruised and reported upon by T. J. Cronin, C. A. Cavell, M. F. McCown, John D. McDonald, Ben Peck and William W. Penoyar, showing area

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in present condition, timber, grazing and agricultural, and, when denuded—grazing and agricultural 7346

DEFENDANTS' EXHIBIT 358

Report of Land Examiner A. W. Rees of a particular tract of land.....7346

DEFENDANTS' EXHIBIT 359

Statement of average assessed value per acre of unsold lands of Oregon and California Railroad Company for each year from 1892 to 1911, inclusive 7346

DEFENDANTS' EXHIBIT 360

Is First Annual Report of the State Forester, F. A. Elliott, to the Governor of Oregon, transmitted December 1, 1911.....7347

DEFENDANTS' EXHIBIT 361

Pamphlet "The Forests of Oregon" by Henry Gannett, published by Department of the Interior, 1902, with map of State of Oregon purporting to show classification of lands and forests by Gilbert Thompson, etc.....7348

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DEFENDANTS' EXHIBIT 362

Statement showing total areas examined by cruisers named, present condition of such areas, probable condition after areas denuded.....7349

DEFENDANTS' EXHIBIT 363

Map of the State of Oregon, published by J. K. Gill Co., of Portland, Oregon, showing in red outline of Oregon and California Railroad Company, and limits of land grant (East Side), and in green outline of Oregon Central Railroad Company (West Side) and limits of land grant 7351

DEFENDANTS' EXHIBIT 364

Form used by N. H. Martin in making reports on lands, October 23, 1912 7351

DEFENDANTS' EXHIBIT 365

Scarborough's Census Map of Washington and Oregon, showing in colors counties, cities, villages, postoffices, steam and electric railways, with stations and distances between stations, and other features, with population according to Census of 1910 7351

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DEFENDANTS' EXHIBIT 366

Map showing location of timber lands on public domain, June 30, 1883, to accompany "Public Domain" by Thomas Donaldson. Map purports to show in green colors the locality of the timber lands, and includes therein Oregon and Washington west of and including Cascade Mountains 7352

DEFENDANTS' EXHIBIT 367

Photograph, View of Oregon City—Willamette Falls, Railroad graded under Elliott in 1868..7352

DEFENDANTS' EXHIBIT 368

Agreement of April 23, 1867, between Oregon Central Railroad Company and Albert J. Cook, for construction of 159 miles of railroad.7352

DEFENDANTS' EXHIBIT 369

Agreement of May 12, 1868, between Oregon Central Railroad Company and A. J. Cook & Company, for construction and equipment of 210 miles of railroad.....7361

DEFENDANTS' EXHIBIT 370

Transfer from Albert J. Cook to S. G. Elliott of contract of April 23, 1867, with Oregon Central Railroad Company 7369

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DEFENDANTS' EXHIBIT 371

Photograph "Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868" 7370

DEFENDANTS' EXHIBIT 372

Map of Country Club Orchard Tracts, The Rogue River Orchard Company, owner.....7370

DEFENDANTS' EXHIBIT 373

Certified copies of letters: May 7, 1870, J. D. Cox, Secretary, to Hon. Jos. S. Wilson, Commissioner of the General Land Office; May 23, 1870, Jos. S. Wilson, Commissioner, to Hon. George H. Williams, U. S. Senate; May 23, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Oregon City, Oregon, relating to evidence of sale of the Oregon Central Railroad to the California and Oregon Railroad Company. Letter May 20, 1872, Willis Drummond, Commissioner, to Hon. C. Delano, Secretary of the Interior, referring to certain papers filed in his office by George H. Williams, Attorney General, for the purpose of obtaining a construction by the Department of the proviso of the Act of April 10, 1869, amendatory to the Act of July 25, 1866, namely, the 160-acre at $2.50 an acre clause.....7371

DEFENDANTS' EXHIBIT 374

Certified copies of form of deed of European & Oregon Land Company; letter from I. H. Moores, Land Agent, to Hon. Willis Drummond, Commissioner of the General Land Office, of January 23, 1874, and letter of March 13, 1874, Willis Drummond to I. R. Moores, in reference to lands said to have been erroneously patented to the Oregon and California Railroad Company 7375

DEFENDANTS' EXHIBIT 375

Certified copies of correspondence between Paul Schulze and George H. Andrews, Land Agents of the Oregon and California Railroad Company, and the General Land Office, between June 20, 1876, and November 9, 1905,—all in reference to lands eroneously patented..7383

DEFENDANTS' EXHIBIT 376

Certified copies 7439

Letter July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent.

May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary, expressing opinion as to validity of assignment by the

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Oregon Central Railroad Company to the Oregon and California Railroad Company, and that patents should be issued to the Oregon and California Railroad Company.

May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler.

July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal.

April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.

May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

DEFENDANTS' EXHIBIT 377

Consists of Senate Judiciary Committee Report No. 906, January 2, 1883; To accompany bill S.2301, providing for the forfeiture of railroad grants in certain cases, report by Mr. Garland, from the Committee on the Judiciary.....7457

DEFENDANTS' EXHIBIT 378

Certified copies: 7468

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Letters April 20, 1871, Jos. S. Wilson, President E. & O. Land Co., to Commissioner G. L. O., April 20, 1871, I. R. Moores to Jos. S. Wilson, and May 9, 1871, W. W. Curtis, Acting Commissioner, to Jos. S. Wilson; in regard to patent to lands inuring to the railroad company.

Correspondence between Jos. S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant.

DEFENDANTS' EXHIBIT 379

Certified copy of map showing definite location of line of Oregon Central Railroad under act of May 4, 1870 7502

DEFENDANTS' EXHIBIT 380

Statement purporting to show, in a general way, financial operations of Oregon Central Railroad Company (East Side), the Oregon Central Railroad Company (West Side), and the Oregon and California Railroad Company, as gathered from the records of meetings of directors and stockholders of said companies.. 7502

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DEFENDANTS' EXHIBIT 381

Circular No. 208, "The Three Year Homestead Law," issued by the Department of the Interior February 13, 1913, addressed to the Commissioner of the General Land Office.....7513

DEFENDANTS' EXHIBIT 382

Summary of patents to Oregon and California Railroad Company 7514

DEFENDANTS' EXHIBIT 383

Certified copy of reports of Commissioners appointed to examine and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine and report upon first to twelfth sections, both inclusive, of the Oregon and California Railroad from Portland to the Oregon and Celifornia State line, with action of President endorsed thereon 7564

DEFENDANTS' EXHIBIT 384

Certified copy of affidavit of H. Villard, of date January 8, 1883, as to completion of railroad to Oregon and California state line 7564

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DEFENDANTS' EXHIBIT 385

H. R. Report No. 1664, 1st Session, 48th Congress, "Unearned Land Grants," May 29, 1884 7567

Report No. 931, Forfeiture of lands granted to the California and Oregon Railroad, March 8, 1886, to accompany bill H. R. 6659, from the Committee on Public Lands 7583

Report No. 930, 1st Session, 49th Congress, Forfeiture of lands granted to Oregon and California Railroad, March 8, 1886, to accompany bill H. R. 6658, from the Committee on Public Lands 7600

DEFENDANTS' BILL 386

Deed from Oregon and California Railroad Company to City of Portland, July 3, 1893, issued for contract No. 1705.....7617

Deed from Oregon and California Railroad Company to City of Portland, July 3, 1893, issued for contract No. 1804.....7623

DEFENDANTS' EXHIBIT 387

Certified copy of stipulation Suit No. 2272, filed in Circuit Court of United States, District of Oregon, case of United States versus Oregon

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and California Railroad Company, signed by Attorney General for complainant, and by Wm. F. Herrin, Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 31, 1898 7628

DEFENDANTS' EXHIBIT 388

Certified copy of stipulation case No. 2661, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 6, 1902 7629

DEFENDANTS' EXHIBIT 389

Certified copy of stipulation case No. 2658, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed December 8, 1902.....7629

DEFENDANTS' EXHIBIT 390

Certified copy of stipulation case No. 2273, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by Joseph McKenna, Attorney General, by Charles J. Schnabel, Assistant United States Attorney, Daniel R. Murphy, United States States Attorney, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., and Wm. F. Herrin, for defendant, filed September 1, 1897 7630

DEFENDANTS' EXHIBIT 391

Certified copy of stipulation case No. 2657, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, for complainant, and Wm. Singer, Jr., and Wm. D. Fenton, for Defendant, filed December 3, 1902 . . . 7630

DEFENDANTS' EXHIBIT 392

Certified copy of stipulation case No. 1936, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company and Oregon Central Railroad Company, and also Oregon and Cali-

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fornia Railroad Company and Oregon Central Railroad Company versus the United States, signed by F. P. Mays, United States District Attorney, for the United States, and E. C. Bronaugh, L. L. McArthur and Wm. D. Fenton, for the Railway Companies.....7631

DEFENDANTS' EXHIBIT 393

Mortgage executed by Oregon and California Railroad Company to Faxon D. Atherton and Milton S. Latham, April 15, 1870.....7631

DEFENDANTS' EXHIBIT 394

Mortgage executed by Oregon Central Railroad Company to Milton S. Latham and Faxon D. Atherton, July 15, 1871.....7655

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Mortgage executed by Oregon and California Railroad Company to Richard Koehler and Heinrich Hohenemser, January 1, 1881.....7680

DEFENDTNS' EXHIBIT 396

Mortgage executed by Oregon and California Railroad Company to Henry Villard, Horace White, and Charles Edward Bretherton, June 1, 1881 7720

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DEFENDANTS' EXHIBIT 397

Mortgage (or trust deed) executed by Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, June 2, 1881.....7758

DEFENDANTS' EXHIBIT 398

Mortgage executed by Oregon and California Railroad Company to the Farmers' Loan and Trust Company, May 25, 1883.....7792